

GAMBLING COMMISSION

Proposed amendments to licence conditions and codes of practice for all operators (LCCP)

**Consultation document
September 2013**

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1 Introduction

- 1.1 This consultation document sets out proposed amendments to the Licence Conditions and Codes of Practice ('LCCP') which apply to gambling operators licensed by the Gambling Commission ('the Commission').
- 1.2 The proposed amendments in this paper will be of interest to **all gambling operators**, to gambling customers and to bodies or individuals with an interest in the regulation of gambling, and particularly the standards to ensure fair and open gambling. The proposed improvements which are relevant for all operators include amendments relating to the handling of complaints and disputes, information requirements, and cooperation with the Commission.
- 1.3 Some of the changes are specific to individual gambling sectors - for example, Section 7 of this document relates specifically to improvements which are proposed for the remote gambling sector. This section will be of interest to those who are currently licensed by the Commission and those who may seek to be licensed in the future.
- 1.4 This document is published alongside a separate consultation on proposed amendments to current licence condition 4, protection of customer funds. This [separate consultation is available on our website](#) and addresses:
- the level of protection of customer funds which should be required of operators, particularly remote gambling operators
 - the disclosure about the level of protection offered that is appropriate for customers of all operators
 - the compliance and information requirements that should apply separately to remote operators and to all operators.
- 1.5 Following completion of this consultation, and taking into account the responses received, the Commission expects to introduce new and amended licence conditions and codes of practice. The new/amended provisions are expected to come into force during 2014. In some limited cases, the amended provisions may come into force (as a Supplement to LCCP) immediately in order to address urgent issues or to include points of clarification to assist the industry in meeting our expectations. However, the majority of changes are expected to be implemented at the earliest in April 2014.
- 1.6 It is likely that the Commission will publish an updated version of LCCP during 2014 to reflect these changes. At the same time, we may also seek to make some structural changes to LCCP in order to aid understanding and navigation of the document, such as more comprehensive numbering and contents pages.
- 1.7 Responses are sought to this consultation (and the separate consultation on the protection of customer funds) by **Wednesday 4 December**. Further details on how to respond, and where to find the response template are included at Section 10, at the end of this document.

2 Background

- 2.1** LCCP was first published in 2007 and significant revisions were last made in March 2011. Three supplements were issued during 2011 and licence holders notified of the changes. The information in these supplements was then incorporated into the consolidated version of LCCP in December 2011, and this remains the current version of LCCP.
- 2.2** LCCP is a significant part of the framework by which the Commission upholds the licensing objectives. The licensing objectives are set out in the Gambling Act 2005, and are:
- preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime
 - ensuring that gambling is conducted in a fair and open way
 - protecting children and other vulnerable persons from being harmed or exploited by gambling.
- 2.3** However, LCCP must be seen within the overall architecture of gambling regulation. In particular, the industry is responsible for the active pursuit of the licensing objectives, with LCCP as part of the infrastructure supporting that pursuit. LCCP is not a standalone checklist which the industry should follow, nor should it be seen as the maximum standard to be achieved. Equally important as adherence to LCCP is the operator's compliance with the Gambling Act 2005 (and with the secondary legislation connected with that Act) and management of the business in a socially responsible manner.
- 2.4** Embedding the licensing objectives in this way is vital for the industry. As the Commission's Chairman said in a blog earlier this year¹, 'opportunities for growth and innovation depend on the gambling industry demonstrating – and convincing the public – that it is genuinely committed to keeping crime out of gambling, keeping it fair and protecting its customers from harm'.
- 2.5** LCCP provides a framework of conditions and codes within which operators can develop good practice, and in the case of ordinary codes of practice can be used in regulatory or court actions as evidence of good practice. In many areas, LCCP leaves room for flexibility in the manner in which it is implemented, and allows businesses to decide how best to give life to the licensing objectives. This applies particularly to the ordinary code provisions. The approach was always intended to allow development/ improvement in operators' policies and procedures, without the need for frequent wholesale changes to LCCP. However, we can and do amend LCCP to improve clarity or where experience suggests more guidance, incentive or deterrence is needed.
- 2.6** This document sets out a number of proposed changes which therefore are aimed at providing helpful clarity in areas that may give rise to misconceptions and misinterpretations, or to implement improvements where experience suggest more or new guidance is required. These changes also include some minor amendments to bring LCCP in line with European legislation or to update references to external documents or sources which are no longer relevant.
- 2.7** Against this backdrop of wider gambling regulation, we would welcome views on whether the amendments proposed in this document achieve these aims of providing clarity and guidance where needed, but maintaining the appropriate emphasis on the industry's overall responsibilities for statutory compliance and pursuit of the licensing objectives and flexibility in implementation.

¹ The Chairman's blog is available on the DCMS website at:
http://blogs.culture.gov.uk/main/2013/01/public_confidence_is_key_to_gr.html

3 Areas of future and ongoing work

3.1 This consultation covers the amendments that the Commission is proposing for implementation in early 2014. There are a number of areas of future or ongoing work which may lead to further changes to licence conditions and codes of practice. This section gives the industry and other interested parties an indication of the most significant work areas which are planned for later in 2013 and 2014 which may lead to further changes to LCCP. Of course, the Commission continues to carry out a broad range of work, such as compliance and enforcement, which will continue to inform the evidence base underpinning LCCP. This work, alongside developments in the evidence base for harm prevention, and policy development in a number of areas may identify additional areas where LCCP may potentially be amended in the future.

Advertising/marketing of free bets and bonuses

3.2 This consultation includes some specific amendments connected with advertising and marketing - for example in relation to the licensee's responsibilities when carrying out marketing via or using third parties.

3.3 However, there is a much wider area of work which may lead to changes to LCCP in the future. In recent years the gambling industry has increased the marketing of bonus offers and free bets as an incentive to attract new customers to their products. The Commission has some concerns about the way in which some of these offers are being marketed to customers, particularly in relation to potentially misleading or unfair terms and conditions.

3.4 Since 2008, the Advertising Standards Authority (ASA) has received an increasing number of complaints relating to free bets and bonuses: of the resulting 58 investigations, 53 were upheld or upheld in part. In order to address this growing issue in a joined up and collaborative way the Gambling Advertising Monitoring Unit, which is made up of representatives from the Advertising Standards Authority, Broadcast Committee of Advertising Practice (BCAP), Ofcom, Phonepay Plus, the Department for Culture Media and Sport (DCMS) and the Gambling Commission, has committed to work together to consider the issue in detail. We will also be considering recent similar movements by international regulators to restrict the use and marketing of bonus offers with unfair or misleading terms and conditions. A consultation looking at this and related advertising issues will be held separately at a later date.

Consultation question

Q1. The Commission welcomes respondents' views on the proposed multi-agency review of the marketing of free bets and bonus offers. In particular, we are interested in comments on the issues that should be covered in the review and any changes thought to be needed to LCCP in relation to marketing (for example code provision 4 relating to marketing).

Social Responsibility

3.5 For the most part, this consultation document does not contain proposed amendments to the social responsibility elements of LCCP, such as those relating to self-exclusion and customer interaction. The Commission is however involved in and monitoring a number of external developments in order to assess the need for possible future amendments to these areas of LCCP.

3.6 Our advice to DCMS on the Triennial Review of machines stakes and prizes was published in June this year, and reflected the strong focus we place on the industry's responsibility to provide socially responsible gambling. A number of industry trade associations are

planning or have developed some detailed social responsibility codes with increasing collaboration across sectors. This work is one element of reflecting these responsibilities in the working practices of gambling companies. The Commission and DCMS continue to provide advice and input as the industry codes develop, to help support the industry as they work towards effective measures to minimise gambling-related harm. This development includes the need for effective evaluation of any new measures and initiatives introduced. An assessment of effective measures is also the focus of regulators worldwide and the Responsible Gambling Strategy Board – for example the Board has created a Self-Exclusion Working Group, in which the Gambling Commission will play a key role.

- 3.7** Therefore, taking into account these developments, the Commission's licence conditions and codes may also develop over time – both to reflect evolving best practice in social responsibility measures and to enable the industry to demonstrate their commitment to implementing effective procedures to minimise harm.

Prevention of underage gambling

- 3.8** All licensed operators are required to put into effect policies and procedures designed to prevent underage gambling and to monitor the effectiveness of those procedures (*Code of Practice 2.2: access to gambling by children and young persons*). Over the years, the Commission, Local Authorities and third parties instructed by the industry have all carried out test-purchasing in order to measure the compliance of operators or groups of operators, and to assess the effectiveness of underage controls.
- 3.9** Third-party test-purchasing offers advantages for both the Commission and operators. Licensees who use third parties to conduct their own test purchasing and share their results with the Commission are less likely to be directly tested than operators who are not proactively providing the Commission with assurances that they are effectively testing their own controls. Test-purchasing demonstrates an operator's commitment to managing the risk to the licensing objectives that their business presents by ensuring that their policies and procedures are effective.
- 3.10** As the Commission continues to gain experience of test-purchasing across different gambling sectors, we will be considering whether it is appropriate to require the use of test purchasing by licensed operators as a means of meeting the existing requirement to monitor the effectiveness of the procedures for preventing underage gambling.
- 3.11** The options that might be considered as part of this work include the use of a third party by licensees to conduct test purchasing, or any other means of test purchasing that can be evidenced as impartial, appropriate and robust.

Consultation question

- Q2.** Do you have comments on the Commission's plans to consider whether the use of test-purchasing, conducted by either a third party or by any other appropriate means, should be a requirement on operators, or indicated as good practice in the Commission's codes of practice?

Research, Education and Treatment

- 3.12** As part of ongoing compliance and enforcement work, the Commission continues to review the contributions that the industry makes to appropriate research, education and treatment. Should it prove necessary, the Commission would consider amending the current ordinary code provision which sets out the Commission's expectations in this area.

Suspicious Activity Reports

- 3.13** Under the Proceeds of Crime Act 2002 (POCA)², all Gambling Commission licensed gambling operators are required to make a report in respect of information that comes to them within the course of their business, where they know or where they suspect that a person is engaged in money laundering, including the spending of the proceeds of crime. The Commission is focused upon being assured that operators understand their obligations and are complying with this Act, as an integral part of their efforts to keep gambling free of crime.
- 3.14** This Suspicious Activity Report (SAR) regime is a process owned by the United Kingdom Financial Intelligence Unit (UKFIU) which is presently part of the Serious Organised Crime Agency (SOCA)³. Under this regime, Gambling Commission licensed operators are required to submit SARs directly to the UKFIU and do not always provide such reports to the Commission routinely. Whilst some operators are under the impression that submitting copies of SARs directly to the Commission would not be compatible with the directions they received from the UKFIU, we do receive such reports from a number of gambling operators and we examine SARs and the related records that have led to a decision to submit such reports through regulatory and compliance activity.
- 3.15** These reports are a rich source of information and intelligence for the Commission's use, potentially allowing generic learning to be derived for dissemination across the industry with a view to improving practice in this area. In order to ensure that the Commission has appropriate access to the intelligence from SARs from the gambling industry, the Commission is exploring a number of options with partner agencies including SOCA and UKFIU to improve collaboration and secure access to information, and cooperation with other gambling regulators. We are exploring in particular a requirement on gambling operators (by way of licence condition) that they submit to the Commission the copies of or the unique reference numbers of, all SARs submitted to UKFIU. This reflects practices that a small number of operators have included in their Anti-money Laundering policies and procedures. The intelligence gained in this manner will become even more important following any expansion to our supervisory role in relation to the gambling industry following the possible implementation of the 4th EU Money Laundering Directive⁴ and associated revised Money Laundering Regulations.

Complaints and disputes

- 3.16** Section 5 of this document contains information about proposed changes to LCCP for implementation in 2014, which take account of the direction of travel of European Union legislation in this area. We will be conducting a further and more comprehensive review of this area in 2014/15 as the UK begins to implement that legislation. This will include for example consideration of the timeline and deadlines for the referral of and handling of disputes. Further information about the EU legislation is included in Section 5.

² www.opsi.gov.uk/acts/acts2002/ukpga_20020029_en_22#pt7

³ To become the National Crime Agency (NCA)

⁴ http://ec.europa.eu/internal_market/company/financial-crime/index_en.htm

4 General and financial conduct

- 4.1 This section sets out proposed amendments to LCCP relating to the general and financial conduct of the operator. In most cases, the new or amended provisions are intended to apply to all gambling operators.

Cooperation with the Commission

- 4.2 The Commission expects operators to work with us in an open and co-operative manner. This expectation is already set out in the Commission's *Statement of principles for licensing and regulation (September 2009)*. In order to emphasise this important principle in LCCP, we propose the introduction of a new ordinary code provision which makes this expectation clear and explicit. A draft of the provision is provided below.

Proposed new ordinary code provision

Cooperation with the Commission

All Licences

1 As made plain in its *Statement of principles for licensing and regulation*, the Commission expects licensees to conduct their gambling operations in a way that does not put the licensing objectives at risk, to work with the Commission in an open and cooperative way and to disclose anything which the Commission would reasonably need to be aware of in exercising its regulatory functions. This includes, in particular, anything that is likely to have a material impact on the licensee's business or on the licensee's ability to conduct licensed activities compliantly. Licensees should have this principle in mind in their approach to, and when considering their compliance with, their obligations under the conditions attached to their licence and in relation to the following provisions of this code.

Consultation question

- Q3. Do you have any comments on the draft provision which makes explicit in LCCP that all gambling operators should act in an open and cooperative manner with the Commission at all times?

Responsibility for third parties

- 4.3 The Commission places the onus on its licensees to uphold the licensing objectives and to ensure compliance with the relevant requirements of the licence. This approach gives operators the flexibility to enter into third party arrangements such as outsourcing, where it is appropriate for their business. However, entering into such arrangements brings with it the need to ensure that the operator has included appropriate terms in the contract to enable the operator to uphold the licensing objectives and ensure compliance with the Act and LCCP and, secondly to terminate the contract when and if things go wrong.
- 4.4 We intend to introduce a new provision which makes explicit the roles and responsibilities of the operator to ensure that this principle is carried forward into the provision of gambling services by a third party with whom they contract. We consider this to include the provision of gambling services to the licensee or direct to the customer on the licensee's behalf. This provision does not aim to place the responsibility for the pursuit of the licensing objectives on the third party. Rather, it enables the operator to implement effective business practices such as outsourcing, but makes clear that the operator continues to be responsible for compliance and upholding the licensing objectives.

- 4.5** The current LCCP includes several different provisions for remote gambling operators relating to this principle in individual instances - for example as currently drafted, operators should ensure that affiliate contracts can be terminated in appropriate circumstances and that third party user interfaces should comply with the Commission's technical standards. These individual provisions are examples of the general principle, and are therefore included in the more general provision
- 4.6** Although the examples given here relate specifically to remote gambling operators, the general provision will apply to all operators, **if** they do in fact enter into such arrangements with a third party. We consider that non-remote operators may find the provision most applicable to their arrangements for marketing, and in the use of affiliates in the non-remote environment.
- 4.7** Operators need not incorporate specific terms in their contracts with third parties for the provision of services which are **not** related to gambling. For example, a contract for cleaning services would probably not affect the provision of gambling facilities and so would not be caught by this provision.

Proposed new social responsibility code provision

Responsibility for third parties

All Licences

- 1** Licensees must take responsibility for third parties with whom they contract for the provision of any aspect of the licensee's business related to the provision of gambling facilities and ensure that the terms on which they contract with such third parties:
- i.** require the third party to conduct themselves in so far as they carry out activities on behalf of the licensee as if they were bound by the same licence conditions and subject to the same codes of practice as the licensee;
 - ii.** oblige the third party to provide such information to the licensee as they may reasonably require in order to enable the licensee to comply with their information reporting and other obligations to the Commission;
 - iii.** enable the licensee to terminate the third party's contract promptly if, in the licensee's reasonable opinion, the third party is in breach of contract (including in particular terms included pursuant to this code provision) or has otherwise acted in a manner which is inconsistent with the licensing objectives.
- 2** Remote licensees must ensure in particular:
- i.** that third parties who provide user interfaces enabling customers to access their remote gambling facilities:
 - a.** include a term that any such user interface complies with the Commission's technical standards for remote gambling systems; and
 - b.** enable them to terminate the third party's contract promptly if, in the licensee's opinion, the third party is in breach of that term.
 - ii.** that the terms on which they contract with their affiliates (that is those who are given a right to advertise, or provide a hyper-link to, a licensee's gambling website) enable them to terminate the affiliate's rights promptly if, in the licensee's opinion, the affiliate is in breach of a relevant advertising code of practice.

Consultation questions

- Q4. Do you have any comments on the proposed social responsibility code provision which sets out the responsibilities of operators when entering into third party arrangements for the provision of gambling services?
- Q5. The specific examples of third party arrangements which may apply to remote operators are affiliates and user interfaces. Do you consider there to be any further arrangements which should be specified in the provision for either remote or non-remote operators?

Independence of the compliance function

- 4.8** It has been the Commission's intention that the role of regulatory compliance should generally be occupied by an individual who has responsibility for only that function and does not carry out the function of other 'specified management functions'. For example, in most larger organisations it would be inappropriate for the compliance manager to also carry out the role of marketing because of the potential conflicts of interest in the roles.
- 4.9** Although this general principle has been considered as part of application and licensing processes and in some discussions with the industry, it has not before been stated explicitly in LCCP or guidance. We have therefore proposed an amendment to licence condition 1.2 which sets out that the individual occupying the management office of regulatory compliance must not, except with the Commission's express approval, occupy any other specified management office. This would apply to all gambling operators, other than small-scale operators.
- 4.10** As a matter of policy, the Commission would consider the same issues for small-scale operators⁵ at the point of application, and **may** apply an individual condition to certain small-scale operators to require the same separation of the compliance function from other key functions in the operator's business. The Commission would take a proportionate approach to this consideration. To take a clear-cut example, we would naturally accept that a sole trader is responsible for compliance and all other functions of the business. This approach will be set out in the Commission's *Guidance Notes* which is made available to all applicants, a revised version of which will be made available in January 2014.

Proposed addition to the licence condition relating to personal licences

Independence of the compliance function

All casino, bingo, general and pool betting, betting intermediary, gaming machine general, gaming machine technical, gambling software and lottery managers licences, except ancillary remote licences

- 1** The person responsible for the licensee's gambling regulatory compliance function as head of that function shall not, except with the Commission's express approval, occupy any other specified management office.

⁵ A 'small-scale operator' as defined in the Gambling Act 2005 (Definition of Small-scale Operator) Regulations 2006.

Consultation question

- Q6. Do you have any comments on the draft addition to licence conditions to set out that the head of compliance must not, except with the Commission's express approval occupy any other specified management office (such as marketing)? Do you consider the Commission's policy of applying similar principles to the assessment of small-scale operators at the point of application to be appropriate?

Financial requirements: anti-money laundering and proceeds of crime

- 4.11** The current version of LCCP contains an ordinary code provision relating to the prevention and detection of money-laundering. It sets out some recommendations on good practice on the appointment of nominated officers, training and suspicious activity reporting. Since this provision was introduced, the Commission has published advice on these areas within *Duties and responsibilities under the Proceeds of Crime Act 2002 – Advice for operators (excluding casino operators)*, current version published in September 2009. Since this advice now incorporates more comprehensive advice and good practice on these areas, the code provision is being updated to refer to the Commission's advice, rather than only to the individual elements which have up until now appeared in the code provision.
- 4.12** Similarly, because the provision pre-dated the Commission's advice in this area, the current provision includes a reference to Association of British Bookmakers' guidelines. We are removing this reference and updating the provision to reflect the publication of the Commission's own advice.
- 4.13** This updated provision will apply to all licences except for casino licences. Casino operators are catered for under the separate existing code provision and specific Gambling Commission guidance on *The Prevention of Money Laundering and Combating the Financing of Terrorism*.

Proposed amended ordinary code provisions

Additions are shown in **bold** and deletions in ~~strikethrough~~

Anti-money laundering

All licences, except casino licences (some aspects of the original applied only to betting operators)

1 As part of their procedures for compliance with the requirements in respect of the prevention and detection of money laundering in the Proceeds of Crime Act 2002 and the Terrorism Act 2000, licensees should **act in accordance with the Commission's advice on the Proceeds of Crime Act 2002, *Duties and responsibilities under the Proceeds of Crime Act 2002 - Advice for operators (excluding casino operators)***.

- ~~unless there is a specific reason not to do so, appoint one or more nominated officers whose duty it is to take overall responsibility for the anti-money laundering procedures within the operation, in particular with respect to Suspicious Activity Reporting; and ensure, through appropriate training and guidance, that all staff who handle money or accounts or accept bets are aware of their duties under anti-money laundering legislation to report all suspicious activity to the nominated officer in a timely manner or, where there is no such nominated officer, directly and promptly to the police. It is the nominated officer's duty to consider such reports and to forward them where appropriate to the Serious Organised Crime Agency~~
- ~~adopt (or reflect in their procedures) the Association of British Bookmakers' guidelines.~~

~~In order to help prevent activities related to money laundering licensees should take into account the Commission's advice on the Proceeds of Crime Act 2002, *Duties and responsibilities under the Proceeds of Crime Act 2002. Advice for operators (excluding casino operators)*.~~

Consultation question

Q7. The proposed changes to the ordinary code provision concerning anti-money laundering are minor amendments, to reflect developments since the current code provision was introduced - ie the publication of Commission advice to operators on this topic. Do you have any comments on these amendments?

General fair and open provisions – compliance with terms

- 4.14** The current licence condition requires gambling operators to satisfy themselves that their terms are not unfair under the Unfair Terms in Consumer Contracts Regulations 1999 and, where applicable, meet the reasonableness test under the Unfair Contract Terms Act 1977. This is designed to ensure that gambling operators publish and implement terms and conditions which are fair and open.
- 4.15** We propose an amendment to make explicit that we would expect operators to act in accordance with the terms and conditions that have been notified to the consumer. This is because we have found ourselves unable to take **graduated** sanctions against an operator in response to a situation where the terms and conditions of a business do not reflect the practical implementation of that business, which had the effect of customers being disadvantaged. We would expect customers to be given the option of closing their account, or ceasing to gamble, if they do not wish to accept the revised terms.

Proposed amended licence condition

Additions marked in **bold**

General fair and open provisions: compliance with terms

All operating licences, except gaming machine technical and gambling software licences

- 1 Licensees must satisfy themselves that the terms on which gambling is offered are not unfair under the Unfair Terms in Consumer Contracts Regulations 1999 and, where applicable, meet the reasonableness test under the Unfair Contract Terms Act 1977 **and must comply with those terms.**
- 2 An accurate summary of the contractual terms on which gambling is offered must be made available to customers and set out in plain and intelligible language.
- 3 Customers must be notified of changes to terms before they come into effect.

Consultation question

Q8. Do you have any comments on the proposed amendment to the licence condition relating to fair and openness of terms to make clear that operators must comply with their own terms and conditions?

5 Complaints and disputes

- 5.1** This section explains proposed amendments to current social responsibility code provision 5, which sets out the requirements which apply to operators for the handling of customer complaints and disputes. The current code provision includes in particular the requirement that operators must offer customers the opportunity to refer unresolved disputes about the outcome of their gambling transaction to an independent third party. This code provision is an important foundation to ensuring that gambling is fair and open.
- 5.2** There are a number of factors which the Commission has taken into account in considering possible amendments to this provision:
- recent developments in European legislation on the topic of alternative dispute resolution, for which UK implementation is being considered, and which will come into force in 2015
 - the introduction in Britain of the Gambling (Licensing and Advertising) Bill, which will, subject to Parliamentary approval, mean that the Commission will regulate a much broader range of remote gambling operators, some of which may be based entirely overseas
 - areas of common misconceptions or problems of implementation which have arisen in our communications with the public, in discussions with independent arbitration bodies and in our engagement with the industry.
- 5.3** Taking into account these factors, the Commission proposes to amend current social responsibility code provision 5 to clarify its position in a number of areas and to prepare for implementation of European legislation.
- 5.4** The developments in EU legislation are expected to have significant impact on the provision of alternative dispute resolution for a wide range of retail sales and service provision. The Directive on Alternative Dispute Resolution ('ADR') for consumer disputes and an EU Regulation on Online Dispute Resolution ('ODR') for consumer disputes were adopted by all EU Member States in April 2013 and were entered into the Official Journal in June 2013. The purpose of the Directive on ADR is to enhance the use of ADR for consumers within the EU, and therefore provide for simple, fast and low-cost out-of-court settlement procedures designed to resolve disputes between consumers and traders arising from the sales of goods and services. In particular, the Directive sets out the independence requirements for 'ADR entities' – those bodies which handle out-of-court dispute resolution. In addition, all ADR entities will have to be approved by one (or more) UK competent authority(ies), to meet specified procedures and deadlines for handling disputes and to provide information to customers and to the relevant competent authority.
- 5.5** The UK government will have two years in which to transpose the requirements into UK law, and the legislation will come into force across the EU in 2015. The government department responsible for implementation is the Department for Business, Innovation and Skills (BIS). BIS intends to consult on UK implementation of the Directive on ADR and the Regulation on ODR in 2014. The exact nature of UK implementation of this Directive could have an impact on the Gambling Commission's requirements in this area. We will therefore be carrying out a further review on complaints and disputes during 2014 and 2015.
- 5.6** In the meantime, the Commission's proposed changes to social responsibility code 5 are in line with the direction of travel of the EU Directive. In summary, the proposed changes are to:
- align terminology with the EU Directive on ADR, in particular to use the term 'ADR entity' instead of 'independent third party' for the referral of unresolved disputes about the outcomes of gambling transactions
 - specify that operators must offer referral of unresolved customer disputes to an appropriate ADR entity free of charge to the customer

- make clear that an ADR entity may refuse to consider a dispute if it is, in their view, frivolous or vexatious, but that it is not appropriate for the licensee to make these decisions
- clarify that the ADR process may not restrict the individual's right to take the matter to court
- set out the requirements placed on operators to name an ADR entity in advance and to give information to customers about handling of complaints and disputes.

Referral to Alternative Dispute Resolution entities

5.7 As well as the proposed amendments to the social responsibility code, we would like to emphasise that the Commission considers that the requirement to offer a referral of an unresolved dispute to an ADR entity applies to **any aspect** related to 'the outcome of the gambling transaction'. This definition of a dispute (which we propose to leave unamended) is intended to ensure that operators are not required by the Gambling Commission to offer ADR to customers with complaints about non-gambling aspects of the operator's business, such as the provision of food, entertainment, or the decor of gambling premises.

5.8 However, we do consider that disputes relating to the outcome of gambling transactions include disputes relating, for example, to the application of bonus offers, account management, or the ability to access funds and winnings as these are all part of the overall gambling transaction.

Aligning terminology: ADR entity

5.9 The Commission considers it appropriate to ensure the code provision applies the same key terminology as the EU Directive on ADR, in order to reduce confusion on the topic. It is proposed that references to the 'independent third party' are changed to 'ADR entity' to mirror the language used in the Directive. This is merely a presentational issue, rather than a change of substance - the change in terminology does not alter or diminish the requirement for an ADR entity to be independent. The Directive, when implemented will give further emphasis to the independence requirements, particularly the requirement for an ADR entity to be approved as by a competent authority.

Charging for dispute resolution

5.10 The requirement for gambling operators to offer third party dispute resolution (or referral to an ADR entity), which was introduced in 2007, was intended to ensure a form of alternative dispute resolution was offered to customers. As an alternative to court proceedings, this would generally be of lower cost and quicker than taking a dispute to court. However, the Commission has identified examples where operators have charged for dispute resolution or specified charges for this service. In most of these isolated cases the charging was intended to discourage alleged vexatious claims, though we consider that decisions on whether to refuse a dispute should lie with the appropriate ADR entity, rather than the operator. In some limited cases, customers have been told that they must agree to bear half of the costs of a referral to the third party and that those costs may be significant and unclear at the beginning of the process. For example, in the cases identified, customers were informed that the costs would be anything from £500 and in one case £1,000. However, this policy of charging goes against the aims of the Commission for operators to provide low-cost alternative to going to court. In the examples identified, the Commission intervened informally and referral to the ADR entity (or independent third party) was provided free of charge.

5.11 The Commission proposes to amend the code provision to specify that the services of the ADR entity must be free of charge for consumers, as was the original intention of this social responsibility code provision. This is in line with the EU Directive on ADR which specifies that ADR must be provided free of charge or with only a nominal charge. We consider that this will have only a small impact on gambling operators, since the majority of operators do currently offer alternative dispute resolution free of charge. This would be consistent with

the approach of most UK alternative dispute resolution or ombudsman schemes which are generally free of charge to the customer.

Frivolous and vexatious disputes

- 5.12** We propose to amend the code to explicitly recognise the potential for ADR entities to refuse frivolous or vexatious disputes. This approach is in line with the EU Directive on ADR which also allows for circumstances where disputes would not be referred to or accepted by the ADR entity, including if they are ‘frivolous or vexatious’.
- 5.13** Frivolous and vexatious is not a term that is defined either by the Commission or in the Directive. We would wish ADR entities to consider disputes frivolous and vexatious only in very clear circumstances and generally in line with the approach taken by other ADR entities. One circumstance where the Commission may agree that a dispute is indeed vexatious is where the customer refuses settlement of the disputed amount and instead wishes to pursue the dispute and insist on a formal or legal decision. However, in some circumstances taking a dispute in the hopes of setting a precedent may not be considered vexatious behaviour. In any case, we consider it more appropriate that the ADR entity is responsible for setting the criteria for assessing a dispute and deciding when a dispute is frivolous and vexatious.
- 5.14** The Directive states that Member States may also set rules which allow ADR entities to refuse to deal with disputes in other specific circumstances, for example where a dispute would be better resolved in courts.

Nature of dispute decision

- 5.15** The current social responsibility code provision states that the decision made by the independent third party (now to be called the ADR entity) may, but need not, be binding on the licensee and the customer. This would not have the effect of depriving a customer from the right to take the matter before the courts if they so wish. However, in order to clarify this issue we propose amendments to the social responsibility code provision to make clear that an agreed resolution may be binding on both parties, but the customer must not be deprived of the right to bring action in court. This amendment is also in line with the Directive on ADR which again makes clear that customers may not be deprived of the right to proceed to the courts if they wish to do so.

Naming the ADR entity

- 5.16** The current requirement in the code of practice is that operators should have ‘arrangements in place for disputes to be referred to an independent third party’, which should mean that the party should be identified and the referral arrangements in place, in advance of any dispute requiring referral. However, the Commission is aware that some operators only make arrangements for the referral of disputes reactively after a dispute has arisen. Customers are frequently confused about where to direct both their initial complaint and unresolved disputes. This is seen in the high volume of calls to the Commission’s contact centre which are connected with complaints and disputes.
- 5.17** The Directive, when implemented, will require traders to inform consumers about the relevant ADR entity, including the website address of the ADR entity, in a clear and easily accessible manner. The Commission proposes to include similar requirements in an amended social responsibility code in order to provide clearer information to customers.
- 5.18** The Commission also proposes to require operators to name the ADR entity they will use in the event of dispute resolution on the licence application form and to notify any changes to this as a key event. This latter is included in the draft provision set out in the section relating to information requirements which is at Section 6 of this document.
- 5.19** The Commission considers that the requirements to offer ADR to customers free of charge and to provide information to customers (as set out in the proposed amended social

responsibility provision) should continue to apply to Small and Medium Enterprises (SME). Because of the low numbers of disputes, we do not consider any additional burden to be disproportionate. However, the provision has been drafted to allow some flexibility in the form of implementation of the requirements. Some SME operators may feel it disproportionate to create a specific ADR entity for their sector, particularly where there are very low numbers of customer complaints or disputes. They might wish instead to have access to one of the available generic ADR entities, or an existing ADR entity for a different gambling field might agree to also look at their dispute cases. This would be permitted under the Directive and the Commission's requirements if the ADR entity can demonstrate the appropriate levels of both expertise and independence.

Proposed amended social responsibility code provision

Proposed additions to the current provision are marked in **bold**, deletions marked as ~~strikethrough~~

Complaints and disputes

All licences (including ancillary remote licensees), except gaming machine technical and gambling software licences

1 Licensees must put into effect a written procedure for handling customer complaints and disputes.

2 Licensees must also ensure that they have arrangements in place for customers to be able to refer any dispute to an independent person offering alternative dispute resolution services (an 'ADR entity') if not resolved to the customer's satisfaction by use of their complaints procedure.

3 It is permissible for such ADR entity to have terms enabling it to reject complaints referred for dispute resolution on the basis they are frivolous or vexatious but licensees may not refuse to refer disputes on that ground.

4 The services of the ADR entity must be free of charge to the customer and must not be subject to terms which restrict, or purport to restrict, the customer's right to bring proceedings against the licensee in any court of competent jurisdiction. Such terms may, however, provide for an agreed resolution of a dispute (arrived at with the assistance of the ADR entity) to be binding on both parties.

5 In this code a 'complaint' means a complaint about any aspect of the licensee's conduct of the licensed activities, and a 'dispute' is any complaint which:

- i. relates to the outcome of the complainant's gambling transaction; and
- ii. is not resolved at the first stage of the licensee's complaints procedure

6 Licensees must ensure that:

- i. **information about their complaints procedure is set out in their terms and conditions**
- ii. **such information is also readily accessible on their gambling premises or website as the case may be**
- iii. **such information includes, as a minimum, the name and status of the person to contact about making a complaint and the identity (with contact details, which can be by way of a link from the licensee's website) of the ADR entity to whom disputes can be referred**
~~customers are told the name and status of the person to contact about their complaint~~
- iv. customers are given a copy of the complaints procedure on request or on making a complaint
- v. all complaints are handled in accordance with the procedure.

~~Licensees must also ensure that they have arrangements in place for disputes to be referred to an independent third party. Customers whose disputes are not resolved to their satisfaction by use of the operator's complaints procedure may refer those disputes to this independent third party. The arrangements under which such complaints are referred may, but need not, provide for the third party's decision to be binding on the licensee and the customer.~~

7 Licensees must keep a record of all complaints that are not resolved at the first stage of the complaints procedure.

8 Licensees must arrange for a copy of the decision on, or a note of the outcome of, each dispute referred to an **ADR entity** ~~the independent party~~ to be provided to the Commission ~~quarterly~~, either by the ADR entity ~~the independent party~~ or by the licensee. **This information should be provided in such format and within such timescale as the Commission may from time to time specify.**

9 Licensees must also arrange for the outcome of any proceedings taken against the licensee (in whatever jurisdiction) by a customer in relation to a gambling transaction to be notified to the Commission as a key event.

Consultation questions

- Q9. Do you have any comments about the proposed amendments to the social responsibility code provision relating to complaints and disputes?
- Q10. The Commission is particularly interested in the planned approach of each sector to implement both the Commission's requirements and (in due course) the relevant aspects of the ADR Directive.

Timelines for submitting and handling of complaints

5.20 In future stages of work connected to the handling of complaints and disputes, the Commission will consider whether it is appropriate to set requirements or guidelines about the timelines which should apply in the handling of disputes. In other sectors, such as the financial sector, there are very clear timelines which apply to both the customer and the operator to ensure proper handling of disputes. These commonly address for example:

- a time limit to ensure consumers refer disputes to ADR promptly if they intend to do so, the most common starting point for which is the conclusion of the internal investigation by the operator or the date on which the event or omission occurred
- a timeline to allow an ADR entity to decline to investigate a matter that occurred long ago - thus enabling operators to dispose of records they would not otherwise need to keep, and ensuring that ADR entities do not have to investigate matters for which there are few records
- a limit on the length of time that a licensee can be allowed in which to investigate a complaint internally and to reach a conclusion, so that the customer is given a realistic timeframe to refer the dispute to ADR if desired.

5.21 However, the ADR Directive mentioned above includes two main types of timelines, some of which are slightly different from common practice in some sectors. The first will ensure that the ADR entity may be permitted by Member States to refuse to deal with a dispute if the consumer has not submitted the complaint to the ADR entity within a pre-specified time limit, which shall not be set at less than one year from the date on which the consumer submitted the complaint to the trader. The second group relates mainly to the timely handling of a dispute by the ADR entity.

5.22 Further details about timelines could be set by member states under the Directive. We will therefore assess whether there is a need for the Commission to specify requirements in this area or whether the issues are already addressed by standard operator and ADR practices, or requirements which may be put in place as part of the implementation of the Directive. This will take place as part of a wider review of the complaints and disputes provision in 2014/15 which will take account of all the developments as the ADR Directive is implemented in the UK.

6 Information requirements

Background, structure and aims

- 6.1** The Commission collects a range of information from licence holders within the gambling industry in order to:
- monitor compliance with gambling legislation, regulations and the licence conditions and codes of practice
 - inform our understanding of the industry
 - help fulfil our statutory obligation to provide advice to the Secretary of State.
- 6.2** We are clarifying some aspects of the information we request of operators at each stage of the licensing cycle - from application stage, to regular reporting under regulatory returns and the information provided to the Commission as either a key event or another LCCP requirement. Consultations are planned later this year concerning the application forms and regulatory returns for remote operators.
- 6.3** In the current version of LCCP, there are three types of information requirements - those set out in licence condition 15, those set out in ordinary code 8 and those which appear in connection to other topics. This last group consists of information requirements which are set out in the provision relevant for that topic – for example, operators are currently required to provide information to the Commission under the social responsibility code provision for complaints and disputes but this is not specified in the list of key events at licence condition 15.2.
- 6.4** When events occur which might cause the Commission to consider the suitability or viability of an operation, we will continue to require reports of such events as soon as reasonably practicable and in any event within five days. When events occur which are important to the Commission's consideration of an operator's continued suitability, but which are not so time critical, we will introduce a new category or group of events which must be reported to the Commission as soon as reasonably practicable but not necessarily within five days. For those events which are more subjective, we have included provisions within what is currently ordinary code provision 8.

Proposed information requirements - summary

- 6.5** The proposed changes to the information requirements set out in LCCP are:
- minor amendments have been made to licence condition 15.1 to clarify that information must be provided as soon as reasonably practicable, and to allow operators to provide information through a third party if the operator chooses to pursue that option and where appropriate permissions are in place
 - we are restructuring key events under 15.2 – in doing so, we are consolidating all those key events which we consider to be material to the operation of the business and which are time-critical into 15.2. In order to help the reader, we are grouping the key events into topics to help demonstrate the reason for asking for the information. Additional items have been included as key events to reflect developments since LCCP was published in December 2011
 - as well as those events which must be notified within five days, we propose a category of information which must be notified as soon as reasonably practicable – reportable events
 - we have simplified by consolidating information requirements which appear elsewhere in LCCP into the one of the appropriate categories of information
 - finally, we have proposed a new ordinary code provision to clarify the Commission's expectations about reporting suspicions of cheating, mainly relevant for betting integrity issues.

Reporting suspicion of offences

- 6.6** The existing licence condition 15.1 requires operators to provide the Commission with information that they know or suspect may relate to an offence under the Act (including breaches of LCCP). We propose minor amendments to this licence condition. First, we wish to make explicit our expectation that information must be provided as soon as reasonably practicable. Secondly we wish to clarify that operators may provide information through a third party, if the operator chooses to pursue that option and where appropriate permissions are in place.

Proposed amended licence condition

Additions marked in **bold**

15.1 Reporting suspicion of offences etc for non-betting licences

All operating licences, except betting, betting intermediary, ancillary remote betting and remote betting intermediary (trading rooms only) licences

1 Licensees must **as soon as reasonably practicable** provide the Commission **or ensure that the Commission is provided** with any information that they know relates to or suspect may relate to the commission of an offence under the Act, including an offence resulting from a breach of a licence condition or a code provision having the effect of a licence condition.

Proposed amended licence condition

Additions marked in **bold**, deletions marked as ~~striketrough~~

15.1 Reporting suspicion of offences etc for betting licences

All betting operating licences, including betting intermediary, ancillary remote betting and remote betting intermediary (trading rooms only) licences

1 Licensees must **as soon as reasonably practicable** provide the Commission or **ensure the Commission is provided** with any information that they:

- i.** know relates to or suspect may relate to the commission of an offence under the Act, including an offence resulting from a breach of a licence condition or a code provision having the effect of a licence condition
- ii.** suspect may lead the Commission to consider making an order to void a bet.

2 Licensees who accept bets, or facilitate the making or acceptance of bets between others, on the outcome of horse races or other sporting events governed by one of the sport governing bodies for the time being included in Part 3 of Schedule 6 to the Act must also provide the relevant sport governing body with sufficient information to conduct an effective investigation if the licensee suspects that **they have any** information ~~in their possession~~ **that** may:

- i.** lead the Commission to consider making an order to void a bet
- ii.** relate to a breach of a rule on betting applied by that sport governing body.

Consultation questions

Q11. Do you have any comments on the proposed clarifications to licence condition 15.1 relating to the reporting of suspicious bets?

Key events reporting

- 6.7** The following paragraphs set out the main areas of change to key events and a short explanation of why each of the material changes is necessary and appropriate.

Operator status

- 6.8** The three items in this group relate to the overall status of the operator. Items 1 and 3 are brought forward from the current LCCP, and item 2 is a new proposed item.

Item 2: Within this section or group of key events, which addresses different types of insolvency events which are required to be reported, we have added item 3 to cover company voluntary agreements.

Relevant persons and positions – investment and loans

- 6.9** The first three items in this group (items 4,5 and 6) cover the notifications which are required when operators receive new shareholders, investments or loans.

Item 4: This provision has been imported from the current licence condition 3 for the purposes of consolidation, and ensures that the Commission will receive information about shareholders.

Item 5: This provision has been added to supplement item 4 above, which was already included in LCCP. The Commission is already notified of investments by those who become shareholders and this new provision ensures that we can also assess the suitability of those who lend to operators without receiving shares in return.

Item 6: Similarly a loan to an operator can be a way of taking a position of control within the operation unofficially. The Commission considers it appropriate to gather such information only if a loan is provided by a financial institution or individual not authorised by the Financial Conduct Authority (FCA) or equivalent.

Relevant persons and positions – key positions

- 6.10** The last two items in this group relate to key positions, and have been included in order to consolidate and clarify the existing provisions in LCCP.

Item 7 and 8: These new items relate to the key positions within an organisation.

- 6.11** When the Commission licenses an operator (those which are not Small-Scale Operators), it reviews the organisation and its management roles and responsibilities and agrees with the operator both the specified management offices (as set out in current licence condition 1.2) and the identity of those Personal Management Licence ('PML') holders occupying those offices. (Item 7a.)

- 6.12** In the case of Small Scale Operators, which are not required to have PMLs, the 'qualifying positions' ie those positions responsible for the same range of responsibilities as the specified management offices (eg finance, compliance) are agreed and the post holders are named on the licence. As mentioned above, these qualifying positions are not required to be held by PML-holders. (Item 7b.)

- 6.13** The Commission may also identify certain additional 'key positions' which may or may not need to be filled by a PML depending on the circumstances and where the Commission also needs to know the identity of the post holder – for example the Money Laundering Reporting Officer ('MLRO'). (Item 7c.)

- 6.14** It has not been as clear as it should have been that the Commission needs to be told by the operator immediately about any material changes to either the roles and responsibilities of key positions following, for example a restructuring or reorganisation, or changes in the identity of the office holder. Such changes could lead to the Commission requiring some additional specified management offices (with PMLs) or to no longer needing some. This is to ensure that at all times the Commission knows who is accountable for the proper running of the licensee's business and for the responsible provision of gambling facilities, and that the licensee continues to be structured in such a way as to reduce the risk of non compliance or risk to the licensing objectives.
- 6.15** The new provisions are designed to ensure that any material changes to the structure of the licensee affecting the roles and responsibilities of the three categories of 'key position' (ie 'specified management offices', 'qualifying positions' or other 'key positions') or in the identities of the individuals holding those positions are notified to the Commission immediately, thereby enabling the Commission to be alerted to any potential concerns and to know at all times who to hold accountable.

Financial events

- 6.16** Within this group of events relating to financial events, the Commission is proposing new amended provisions as seen in items 9,12, 13 and 14, while items 10, 11 and 12 are brought forward from the existing LCCP.

- Item 9: A material change to banking arrangements is difficult to complete without causing disruption to the ongoing business. It is also becoming increasingly difficult to make these changes with the larger established banking institutions, leading some operators who change banks to choose establishments that pose a higher risk, in terms of potential money laundering. The termination of banking arrangements by the provider could amongst other things, indicate financial stress on a company, possible moneylaundering risks or concerns about the proper management of the business. This new provision has been included so that the Commission is notified of material changes to banking arrangements.
- Item 13: The current version of LCCP already has a requirement to notify unplanned changes to the auditor. This amendment clarifies that the publication of qualified accounts should also be notified to the Commission.
- Item 14 and 15: These new provisions are proposed as a result of a review of the Commission's approach to the protection of customer funds. Please see the separate consultation document for more detail on the approach we intend to take and the issues on which we ask for comment during the consultation period.

Legal or regulatory proceedings or reports

- 6.17** This group of key events is designed to ensure that the Commission is notified of relevant legal or regulatory proceedings or reports. These proceedings and reports could potentially have an effect of the Commission's considerations of the licensee's suitability, or their ability to uphold the licensing objectives. Alternatively, the information may be helpful for the Commission in reducing duplication of compliance effort between regulators, or to simply inform the Commission of important changes in the gambling environment .
- Item 16: This new provision adds making an application to another gambling regulator a key event, as well as the outcome of the application.
- Item 17: This item has been carried forward from the current version of LCCP.

- Item 18: This new provision specifies that where available, operators must supply any report which is the outcome of a compliance assessment.
- Item 19: Where a third party such as an auditor raises concerns about the provision of facilities for gambling as a high priority and these concerns are escalated to the Board, audit or risk committees, the operator should also notify the Commission, along with a summary of the nature of the concerns.
- Item 20: This item relating to an operator applying a disciplinary sanction to a personal licence holder, has been carried forward from the current version of LCCP.
- Item 21: This provision which relates to the commencement or outcome of any material litigation has been brought forward by the existing LCCP. It has been amended to clarify that the provision applies to the group company.

Gambling facilities

6.18 This group of key events relates to information about the gambling facilities which could indicate a possible risk to upholding the licensing objectives.

- Item 22: The Commission should be notified of any breach of information security which has an impact on customer privacy or which prevents customers from accessing their accounts. We have proposed 24 hours as the appropriate level after which the Commission should be notified. We would welcome respondents' comments on this area.
- Item 23: This item is new and requires operators to notify the Commission when a change is made the arrangements to the referral of disputes to an ADR entity. Please see section 5 of this paper, which relates to complaints and disputes for more detail
- Item 24: We have amended item 24 - which exists in the current LCCP – so as to use more generic terms for the platforms for remote gambling.

Proposed restructured licence condition – to replace existing licence condition 15.2

15.2.1 Reporting 'Key' events

Items which are new or substantially amended are marked.

All operating licences, except ancillary remote licences

15.2.1 A key event is an event that could have a significant impact on the nature or structure of a licensee's business. Licensees must notify the Commission, or ensure the Commission is notified, in such form or manner as the Commission may from time to time specify, of the occurrence of any of the following key events as soon as reasonably practicable and in any event within five working days of the licensee becoming aware of the event's occurrence¹.

Operator status

- 1 in the case of licensees which are companies, a petition being presented for their winding up or the winding up of any group company of theirs, or they or any group company being placed in administration or receivership or their directors proposing to creditors a composition in satisfaction of its debts or a scheme of arrangement of its affairs
- 2 in the case of licensees which are bodies corporate, but not companies, any event substantially equivalent to those listed in the previous bullet point (New)

- 3 in the case of a licensee who is an individual (or a partner in a partnership licensee) their being presented with a petition for their bankruptcy or sequestration or their entering into an individual voluntary agreement

Relevant persons and positions

- 4 in the case of licensees who are companies or other bodies corporate having a share capital, the name and address of any person who (whether or not already a shareholder or member) becomes a shareholder or member holding 3% or more of the issued share capital of the licensee or its holding company (Imported from existing licence condition 3)
- 5 any investment, or intended investment, in a licensee which is not by way of subscription for shares (New)
- 6 the taking of any loan from any person not authorised by the Financial Conduct Authority or the entering into an arrangement whereby a third party provides services to, or grants any licence concession or permission to, the licensee other than for full value: full details of the arrangements and/or a copy of the loan agreements must be supplied (New)
- 7 the appointment of a person to, or a person ceasing to occupy, a 'key position': a 'key position' in relation to a licensee is:
 - a. in the case of a small-scale operator, a 'qualifying position' as defined in the Gambling Act 2005 (Definition of Small- Scale Operator) Regulations 2006;
 - b. in the case of an operator which is not a small-scale operator, a 'specified management office' as set out in (current) LCCP licence condition 1.2;
 - c. a position the holder of which is responsible for the licensee's anti-money laundering procedures, including suspicious activity reporting; **and**
 - d. any other position for the time being designated by the Commission as a 'key position'.(Notification is required whether or not the person concerned is required to hold a personal management licence and whether or not such the event notified requires the licensee to apply for a variation to amend a detail of their licence.) (Amended)
- 8 any change to the structure or organisation of the licensee's business which affects a 'key position' or the responsibilities of its holder (New)

Financial events

- 9 any material change in the licensee's banking arrangements, in particular the termination of such arrangements or a particular facility and whether by the licensee or the provider of the arrangements (New)
- 10 any breach of a covenant given to a bank or other lender
- 11 any default by the licensee or, where the licensee is a body corporate, by a group company in making repayment of the whole or any part of a loan on its due date
- 12 any court judgments (in whatever jurisdiction) against the licensee or, where the licensee is a body corporate, a group company, remaining unpaid 14 days after the date of judgment
- 13 where the licensee is required to have their accounts independently audited, any qualification to an auditors' report; and any unplanned change of auditor including a change prompted by a dispute or resulting from auditors being unable or unwilling to sign an unqualified audit report (Amended)
- 14 any change in the licensee's arrangements for the protection of customer funds in accordance with general licence condition 4 (where applicable) (New)
- 15 where the licensee holds customer funds in a separate bank account, any deficit on reconciliation of such bank account (New)

Legal or regulatory proceedings or reports

- 16 the making by the licensee, or in the case of a licensee which is a body corporate, any group company of theirs, of any application to a gambling regulator in another jurisdiction: the licensee must also notify the outcome of any such application and, in the case of a withdrawal or refusal of the application, the reasons for such withdrawal or refusal (New)

- 17 any investigation by a professional, statutory, regulatory or government body (in whatever jurisdiction) into the licensee's activities, or the activities in relation to the licensed entity of a personal licence holder or a person occupying a qualifying position employed by them, where such an investigation could result in the imposition of a sanction or penalty which, if imposed, could reasonably be expected to raise doubts about the licensee's continued suitability to hold a Gambling Commission licence
- 18 the receipt of any report from a professional, statutory or other regulatory or government body (in whatever jurisdiction) of the outcome of a compliance assessment in relation to the gambling activity of the licensee or, where the licensee is a body corporate, of a group company: a copy of the report should be provided where available to the licensee (New)
- 19 the referral to the licensee's Board, or persons performing the function of an audit or risk committee, of concerns raised by a third party (such as an auditor) about the provision of facilities for gambling which are expressed (in whatever terms) as requiring attention as a high priority: a summary of the nature of the concerns must be provided (New)
- 20 the imposition by the licensee of a disciplinary sanction, including dismissal, against the holder of a personal licence or a person occupying a qualifying position for gross misconduct; or the resignation of a personal licence holder or person occupying a qualifying position following commencement of disciplinary proceedings in respect of gross misconduct against that person
- 21 the commencement (in whatever jurisdiction) of any material litigation against the licensee or, where the licensee is a body corporate, a group company: the licensee must also notify the outcome of such litigation (Amended)

Gambling facilities

- 22 any breach in the licensee's information security that adversely affects the confidentiality of customer data or prevents customers from accessing their accounts for longer than 24 hours (Imported from current ordinary code 8)
- 23 any change in the identity of the ADR entity for the handling of customer disputes, as required by the Social Responsibility Code relating to complaints and disputes (Consolidated from current SR Code 5)
- 24 in the case of remote gambling, the commencement or cessation of trading on website domains (*including mobile sites or mobile device applications*) or broadcast media through which the licensee provides gambling facilities. (Amended)

In this condition:

- (i) 'body corporate' has the meaning ascribed to that term by section 1173 of the Companies Act 2006 or any statutory modification or re-enactment thereof;
- (ii) in respect of a company, 'holding company' and 'subsidiary' have the meaning ascribed to that term by section 1159 of the Companies Act 2006 or any statutory modification or re-enactment thereof;
- (iii) a 'group company' is any subsidiary or holding company of the licensee and any subsidiary of such holding company.

¹ Key events can be reported securely online at the Commission's website at www.gamblingcommission.gov.uk or by email to key.events@gamblingcommission.gov.uk

Consultation question

- Q12. We would welcome comments on new or significantly amended key events as set out in the box above. Please ensure that you reference the provision(s) to which you are referring.

Other reportable events

Proposed amended licence condition

15.2.2 Reporting other reportable events

All operating licences, except ancillary remote licences

1 Licensees must also notify the Commission in such form or manner as the Commission may from time to time specify, or ensure that the Commission is so notified, as soon as reasonably practicable of the occurrence of any of the following events¹:

- i.** the conclusion of a dispute referred to an ADR entity and in such case providing the Commission with a copy of the decision or note of the outcome²
- ii.** the outcome of any proceedings taken against the licensee (in whatever jurisdiction) by a customer in relation to a gambling transaction.

¹Events required to be notified to the Commission by 15.2.1 or 15.2.2 may be reported securely online at the Commission's website at www.gamblingcommission.gov.uk or by email to key.events@gamblingcommission.gov.uk

² In respect of the referral of disputes to an ADR entity the licensee's attention is drawn to social responsibility code provision [6]

Ordinary code – Information requirements

New ordinary code provision, to replace existing ordinary code 8

Information requirements

All licences, except ancillary remote licences

1 As stated earlier in this code, the Commission expects licensees to work with the Commission in an open and cooperative way and to inform the Commission of any matters that the Commission would reasonably need to be aware of in exercising its regulatory functions. These include in particular matters that will have a material impact on the licensee's business or on the licensee's ability to conduct licensed activities compliantly and without risk to the licensing objectives.

2 Thus, licensees should notify the Commission, or ensure that the Commission is notified, as soon as reasonably practicable and in such form and manner as the Commission may from time to time specify¹, of any matters which in their view could have a material impact on their business or affect compliance. The Commission would, in particular, expect to be notified of the occurrence of any of the following events in so far as not already notified in accordance with the conditions attached to the licensee's licence²:

- any material change in the licensee's structure or the operation of its business
- any material change in managerial responsibilities or governance arrangements
- any report from an internal or external auditor expressing, or giving rise to, concerns about shortcomings in the management control or oversight of any aspect of the licensee's business related to the provision of gambling facilities

¹ These matters can be reported securely online at the Commission's website at www.gamblingcommission.gov.uk or by email to key.events@gamblingcommission.gov.uk

² Events which **must** be reported, because the Commission considers them likely to have a material impact on the nature or structure of a licensee's business, are set out in general licence condition 15.2.

Consultation questions

- Q13. Do you have any comments on the proposed 'other reportable events', which are events which should be notified to the Commission as soon as reasonably practicable, but not necessarily within five working days, as is the case for key events?
- Q14. Do you have any views on the proposed amendments to the ordinary code provision 8 about providing information to the Commission about wider material changes or risks? When responding, please consider whether there are additional items we should add to ordinary code 8 to make clear our expectations in this area.

Consequential amendments

- 6.19** As a result of consolidating information requirements within the licence conditions and codes of practice, we will delete the following provision to avoid duplication.

Proposed deletion of existing licence condition

Notification of shareholders

All operating licences, except ancillary remote licences, issued to companies

~~1 All company licensees must notify the Commission of the name and address of any person who becomes a shareholder in the company or its holding company holding 3% or more of the issued share capital of the company or its holding company; or any existing shareholder who acquires a holding of 3% or more of the issued share capital of the company or its holding company.~~

~~2 In this condition 'holding company' has the meaning ascribed to that term by section 1159 of the Companies Act 2006 or any statutory modification or re-enactment thereof.~~

Provision of information in respect of cheating – eg betting integrity

- 6.20** The existing requirement at licence condition 15.1 of the current version of LCCP requires all operators, including betting operators to provide information to the Commission if they have information which they know or suspect may relate to an offence under the Act (Gambling Act 2005). In addition, betting operators must provide information which they suspect may lead the Commission to consider making an order to void a bet.
- 6.21** Occasionally, questions arise concerning the Commission's expectations under this licence condition. In order to provide clarity on this area, we are proposing a new ordinary code provision which specifies that operators should take account of the scope of offence of cheating in the Gambling Act 2005. As a result, the Commission would expect to be notified of suspected or attempted interference with events in Great Britain on which bets are placed across the world, **and** of suspected or attempted interference of events outside Great Britain where bets are placed in Great Britain.

Proposed new ordinary code provision

Provision of information in respect of cheating

All betting operating licences, including betting intermediary, ancillary remote betting and remote betting intermediary (trading room only) licences

Ordinary code provision

1 In considering their obligations under licence condition 15.1 licensees should in particular keep in mind the scope of the offence of cheating. The Commission would expect to be notified of any information a licensee has which causes them to know or suspect that there has been interference or attempted interference with:

- i.** an event which has taken or is taking place in Great Britain on which bets have been or are likely to be or to have been placed (whether in Great Britain or elsewhere); or
- ii.** an event which has taken or is taking place outside Great Britain on which bets have been or are likely to be or to have been placed in Great Britain.

Consultation question

Q15. Do you have any comments on the proposed betting integrity ordinary code provision to specify the Commission's expectations about reporting of suspected interference with events in Great Britain or elsewhere?

7 Amendments specific to remote gambling operators

Background: Gambling (Licensing and Advertising) Bill

- 7.1** On 9 May 2013 the Gambling (Licensing and Advertising) Bill ('The Bill') was introduced into Parliament. Subject to Parliamentary approval, the Bill will require operators that transact with or advertise to British consumers to obtain an operating licence from the Gambling Commission. Depending on how quickly the Bill proceeds through Parliament, the new regime could be implemented as early as April 2014.
- 7.2** Although at the moment the Commission regulates only a small proportion of the British remote gambling consumer market, there are a full set of applicable licence conditions and codes. Only very minor technical consequential changes would be essential to enable the new regime to be implemented. We expect that under the new regime, the Commission will regulate a much broader range of remote gambling operators, some of which may be based entirely overseas. Most of the changes outlined below are improvements designed to reflect both the expected range and structure of the remote gambling sector and experience here and overseas in regulating the remote sector.

Location (and relocation) of remote gambling equipment⁶ (Key equipment)

- 7.3** Currently an applicant for a remote operating licence⁷ is required as part of its application to set out the location (or intended location if it is not currently trading) of its key equipment. Upon grant of licence, schedule R of the licence specifies details of the jurisdiction(s) in which the remote gambling equipment is located.
- 7.4** The Commission has also applied individual conditions to remote licensees to reflect the specific circumstances of that equipment and to require the licensee to vary the detail of its licence (under s104(1)(b) of the Act) if it intends to relocate any of its key equipment to another jurisdiction. The condition also requires the licensee to surrender its licence if the result of the relocation means that the licensee would no longer have any remote gambling equipment in Britain. This is because currently the entitlement to hold an operating licence comes from at least one piece of key equipment being located in Britain.
- 7.5** As set out at the start of this section, the Bill will require operators that transact with or advertise to British consumers to obtain an operating licence from the Gambling Commission. It also removes the need for remote licensees to locate at least one piece of key equipment in Britain.
- 7.6** However, a licensee must be able to fulfil its regulatory obligations from the jurisdiction(s) in which it locates its key equipment. In this regard, a licensee must conduct robust due diligence to satisfy itself and the Commission that it can fulfil its regulatory responsibilities from the jurisdiction(s) in which its key equipment is to be located. Where the licensee/applicant is unable to satisfy the Commission, a licence or variation to a licence will not be granted.
- 7.7** An applicant will need (as they do now) to set out where it proposes to locate its remote gambling equipment in its application to us and provide assurance that it can fulfil its regulatory obligations. The Commission will consider the application on that basis and the jurisdiction(s) in which remote gambling equipment is located will continue to be reflected in Schedule R to the licence.

⁶ Defined in s36 of the Gambling Act 2005.

⁷ The remote operators required to provide this information about key equipment at application stage are remote operators, other than ancillary remote operators – ie remote casino, bingo, general betting real events, general betting virtual events, pool betting and betting intermediary operators as well as remote lottery managers and remote society lotteries.

- 7.8** The Commission considers it appropriate (as is currently the case) for a licensee to apply to vary its licence if it intends to relocate any of its key equipment to another jurisdiction thus enabling licensees to provide the necessary assurance to the Commission that the operator will still be able to fulfil its regulatory obligations.
- 7.9** It is worth noting that the Commission does not consider it appropriate to require a licensee to vary its licence for the relocation of equipment within the same jurisdiction. Regulatory returns currently require remote licensees to report ‘major changes to gambling infrastructure’. This includes, deployment of new servers, new security hardware, new network configurations, or relocation of data centre/hosting facilities⁸. The Commission will therefore receive notification of the full address of the key equipment which will cover circumstances where key equipment is relocated within the jurisdiction.
- 7.10** During pre-consultation engagement, industry stakeholders have suggested that there may be circumstances where data protection laws in the overseas jurisdictions in which remote gambling equipment and data is located may prohibit the transfer of such data to the Commission.
- 7.11** The Commission’s view is that licensees must ensure they can fulfil their regulatory obligations and one of the key obligations is licence condition 15.1 which places requirements on licensees to provide information to the Commission that relates to, or that they suspect relates to, an offence under the Act. For a licensee to comply with that licence condition it will need to be able to provide personal data to the Commission from the jurisdiction in which that data is physically located, whether or not that data has already been provided to the local regulator.
- 7.12** The draft general condition is set out below.

Proposed new condition

Location of key equipment

All remote casino, bingo and betting licences other than ancillary licences and remote betting intermediary (trading room only) licences

1 Licensees must not relocate any of the remote gambling equipment listed in Schedule R to their licence from one jurisdiction to another without first obtaining a variation of that detail of the licence on application pursuant to section 104(1)(b) of the Act.

Consultation questions

- Q16. Do you agree that licensees should be required to apply to vary their licence before relocating key equipment to another jurisdiction?
- Q17. Do you agree with the Commission’s view that it is sufficient to receive notification of changes in the location of key equipment within a jurisdiction through regulatory returns submissions?

Access to (and provision of data from) key equipment

7.13 The Bill removes the need for remote licensees to locate at least one piece of key equipment in Britain and therefore key equipment can be located overseas. This raises potential challenges for the Commission in obtaining information.

⁸ Guidance notes to the Remote Casino Bingo and Betting (RCBB) regulatory return

- 7.14** Although the Commission has powers in section 122 of the Act to obtain information from licensees, these are restricted to circumstances where that information will be used in determining whether there has been a breach of licence condition or in determining the suitability of a licensee. The Commission also expects to require information from licensees in order to conduct its regulatory activities in circumstances where the Commission is not using that information for determining the suitability or compliance with a condition of that operator but for example investigating the actions of others.
- 7.15** Also, the Commission’s power under section 317 of the Act to enter premises and obtain information does not extend outside of Britain and therefore would not assist the gathering of information from overseas based operators.
- 7.16** Although we expect operators to work with us in an open and cooperative way, we also consider that it is important to underpin that general expectation with an explicit requirement on licensees to provide access to key equipment and information held on that equipment. Therefore the Commission proposes the following new condition.

Proposed new licence condition

Access to (and provision of data from) key equipment

All remote casino, bingo and betting licences other than ancillary licences and remote betting intermediary (trading room only) licences

1 Licensees must, on request, permit an enforcement officer¹ to inspect any of their remote gambling equipment and /or provide to the Commission copies of data held on such equipment in such format and manner as the Commission may request.

¹ Defined in section 303 of the Gambling Act 2005

Consultation questions

Q18. Do you have any comments on this draft provision to specify that an individual nominated by the Commission as an enforcement officer must be permitted access to inspect remote gambling equipment and that copies of data held on remote gambling equipment must be provided as required by the Commission?

Remote gambling software and providers

- 7.17** Gambling software is defined in section 41 of the Gambling Act 2005 as computer software that is used in connection with remote gambling (including online gambling) but does not include anything for use solely in connection with a gaming machine. An operator requires a gambling software licence if it manufactures, supplies, installs or adapts gambling software that is used in connection with remote gambling.
- 7.18** Currently the requirement to hold a gambling software licence applies to gambling software businesses based in Britain or based overseas but supplying to operators in Britain. As things stand, following the implementation of the Bill, gambling software businesses that only supply Commission licensed operators based outside of Britain would not require a gambling software licence to do so.
- 7.19** The Commission considers that all gambling software businesses should be subject to the same licensing requirements. The licensing of operators involved in the development of and the supply of gambling software to operators is important in providing assurance over the integrity of the product. We therefore propose to introduce the following condition which requires Commission licensed operators to source their gambling software from Commission licensed gambling software businesses.

Proposed new licence condition

Remote gambling software

All remote casino, bingo and betting licences other than ancillary licences and remote betting intermediary (trading room only) licences

1 All gambling software¹ used by the licensee must have been supplied by a holder of a gambling software operating licence.

¹ As defined in section 41(2)&(3) of the Act.

Consultation questions

Q19. Do you agree with the proposal that all gambling software used by a Commission remote licensee (wherever its key equipment is located) must be supplied by a gambling software licence holder?

Poker and other networks

Background

- 7.20** The Commission, like many other gambling regulators internationally, has been considering its approach to the regulation of poker networks and other network gambling arrangements. Networks exist for many gambling products like peer-to-peer poker, bingo, pari-mutuel betting and some slot type games with jackpots. The primary reason for networks is to increase player numbers (eg player liquidity) for gambling products that require sufficient liquidity to operate viably. These arrangements involve a business to customer (B2C) operator and the business to business (B2B) network operator.
- 7.21** The ‘B2C operator’ is the customer acquisition operator and is responsible for registering the player, age and identity verification, marketing and generally processing deposits and withdrawals by the player
- 7.22** The ‘B2B network operator’ will host players sent from the B2C operators and provide the actual gambling (eg poker). The B2B operator is responsible for the fairness of the gambling. The B2B network operator will often pool players from B2C operators in multiple jurisdictions and so in the context of the British model there will be British players that enter the network via Commission licensed operators, but there will also be overseas players that enter the same network via an overseas B2C operator (a ‘third party operator’).
- 7.23** It is the Commission’s view that both the B2C operator and the B2B network operator are providing facilities for gambling (as defined in section 5 of the Act) and will require the appropriate operating licence⁹ from the Commission if they transact with or advertise to British consumers (we have termed this ‘British activity’¹⁰).

Current framework

- 7.24** It is important to note that the Commission’s existing regulatory framework permits network arrangements. The appropriate operating licences are already available for those network activities, for example, a poker network or a slot game with a pooled jackpot would fall

⁹ A gambling software licence only authorises a business to manufacture, supply, install and adapt gambling software. It does not authorise the holder of such a licence to provide facilities for gambling.

¹⁰ ‘British activity’ is defined in paragraphs 7.29 – 7.30.

under a remote casino licence, a bingo network would fall under a remote bingo licence, and a pari-mutuel (pool) betting network would require a remote pool betting licence.

- 7.25** As set out above, both the B2C and B2B operators will be responsible for different aspects of the gambling provision and therefore will be responsible for different aspects of the regulatory requirements. The Commission does not consider it appropriate to define which obligations in LCCP apply to which entity as these are likely to vary between different commercial arrangements. But both parties need to ensure that their commercial agreements mean they collectively meet the regulatory obligations and set out clearly who is responsible for what.
- 7.26** As set out above, the Commission is considering what improvements to the framework are needed to reflect the range and structure of operators that we expect to license in the future. We are bringing forward proposals to define some tailored conditions for the B2B network operators in order to reflect the particular risks. These are set out below.

Participation by British players in network arrangements

- 7.27** The Bill requires that operators that transact with British consumers obtain a licence from the Commission. The Commission considers therefore that it is appropriate for networks to have measures in place to ensure British consumers that participate in network arrangements do so via a Commission licensed B2C operator.
- 7.28** The Commission therefore proposes to introduce a condition that requires the B2B network operator to have policies and procedures in place that are designed to ensure British players participate in the B2B network via a Commission licensed operator. This should include measures to minimise the risk that British consumers participate via unlicensed B2C operators and effective procedures for dealing with any breaches of this requirement and preventing future breaches.
- 7.29** Pre-consultation with stakeholders has raised questions about what British activity¹¹ is and therefore what would be caught as being licensable activity if the Bill provisions are implemented. The Bill as currently drafted states that a licence is required, 'if no such [remote gambling] equipment is situated in Great Britain but the facilities are used there'.¹²
- 7.30** Some stakeholders have suggested that the residential address of the player should be taken as the determining factor of when activity is British activity. However, the Commission's view is that the Bill as currently drafted captures gambling by a customer who is physically located in Britain when gambling facilities are used.

Information sharing arrangements

- 7.31** We have said that in network arrangements the B2C operator and the B2B network operator are responsible for different aspects of the gambling. This raises challenges in terms of sharing information that enable all parties to discharge their regulatory responsibilities, in particular in relation to the detection of potential criminal behaviour or problem gambling, and to resolve customer complaints. Therefore, in order to meet regulatory obligations the B2B network operator must have effective measures in place for the sharing of information. This will require information to be shared between itself and other B2C operators, whether or not the B2C is licensed by the Commission.
- 7.32** The Commission intends to introduce a condition on the B2B network requiring it to have appropriate information sharing arrangements in place that enable it (and B2C operators licensed by the Commission) to discharge their regulatory responsibilities.

¹¹ Reference to British activity is also referred to in this document as the activity of a 'domestic player'

¹² Clause 1(2) of the Gambling (Licensing and Advertising) Bill.

7.33 It is the Commission's view that the measures set out above in relation to participation by British players in network arrangements and information sharing apply to all current network arrangements.

Pooling British and non-British player liquidity

7.34 Some B2B network products like bingo networks, pool betting networks and online slot style networks pool players together in order to pool prizes to attract players. The players do not participate in the gambling directly with each other. They compete for the same prize but there is no interaction between players in the gambling. In bingo networks (and bingo products in general) there is interaction between participants but this is social interaction on message board and forums.

7.35 In contrast, poker network arrangements are also known as peer-to-peer gaming because players compete directly with each other. Although in poker the generation of the result (ie each card produced) is controlled by the gambling system and is required to be random (it will need to be random in accordance with the Commission's technical standards¹³) the actions of one player participating in a poker hand will influence other players participating in that hand.

7.36 Also, there is an inherent risk that players attempt to collude and cheat other participants in the poker room and/or chip dump in order to launder money. We are aware that poker operators (including poker networks) take active steps to identify and tackle collusion, cheating and chip dumping. We also recognise that there are strong commercial drivers on poker providers to minimise the risk of such activity.

7.37 This does create additional challenges in the network environment because the B2B network operator does not have full information about the participating players – that information is held by the B2C operator. In particular the Commission is mindful that an overseas licensed B2C operator will be subject to different regulatory requirements and therefore there is a risk that players enter the network via less stringent means. This in turn increases the risk that criminal money may enter the network and/or the risk of collusion/cheating against British players.

7.38 To mitigate this risk, the Commission proposes a condition that applies only to B2B networks that provide peer to peer gaming (ie poker networks). This condition will require the poker network when pooling British players with players that have entered via a non-Commission licensed operator ("third party operator"), to have effective measures in place in a number of areas.

7.39 Firstly, the B2B network operator must ensure that third party operators hold the appropriate permissions in the country in which it is based. Secondly, the B2B network must approve third party operators as being suitable having conducted due diligence enquiries. Finally, in considering the suitability of third party operators the B2B network operator must in particular satisfy itself that the third party operator has in place measures to identify customers that are broadly equivalent to the Third Money Laundering Directive.

7.40 Below are two draft conditions that apply to network arrangements. The first is a condition that relates to poker (ie peer-to-peer gaming) networks. The second applies to other network arrangements, such as bingo networks.

¹³ The Commission's *Remote Gambling and Software Technical Standards* are available on our website at http://www.gamblingcommission.gov.uk/technical_standards.aspx

Proposed new licence condition

Poker networks

Remote casino licences (except ancillary remote licences)

All licensees who provide facilities for peertopeer gaming in circumstances in which they do not contract directly with any of the players using those facilities ('network operators') must have put into effect and monitor the effectiveness of policies and procedures designed to ensure that:

- 1 every player using the facilities in Great Britain ('a domestic player'¹) is doing so pursuant to a contract entered into between that player and another holder of a Gambling Commission remote casino operating licence;
- 2 every player who is not a domestic player but who participates in a game of chance in which a domestic player also participates is doing so pursuant to a contract between that player and a gambling operator not licensed by the Gambling Commission ('a third party operator') which:
 - i. holds all licences or permissions (if any) required in relation to its provision of facilities for peer to peer gaming by the laws of the state or states in which it is domiciled or incorporated;
 - ii. has been approved by the network operator, after conducting due diligence enquiries into those individuals who appear to the network operator to have a material financial interest in it, as suitable to provide those facilities; and, in particular,
 - iii. has in place policies and procedures in respect of the identification of customers which in the network operator's reasonable opinion satisfy requirements as to customer due diligence broadly equivalent to those set out in Directive 20005/60/EC ('the Third Money Laundering Directive') or any subsequent replacement for or re-enactment thereof.
- 3 the network operator's arrangements for the sharing of information both with any remote casino licence holder through whom domestic players access their facilities and with third party operators are such as to enable all parties to discharge effectively their respective regulatory obligations, in particular in relation to:
 - prevention of money laundering and the financing of terrorism,
 - investigation of suspected cheating,
 - combating of problem gambling, and
 - investigation of customer complaints.

¹ A 'domestic player' is a player whose activity is caught as licensable activity – defined in this document as British activity.

Proposed new licence condition

Other networks

Remote casino, bingo and pool betting licences (except ancillary remote licences)

All licensees who provide facilities for gambling other than peer-to-peer gaming in circumstances in which they do not contract directly with any of the players using those facilities ('network operators') must have put into effect and monitor the effectiveness of policies and procedures designed to ensure that:

- 1 every player using the facilities in Great Britain ('a domestic player') is doing so pursuant to a contract entered into between that player and another holder of a Gambling Commission remote casino operating licence;

2 not applicable.

3 the network operator's arrangements for the sharing of information both with any remote casino licence holder through whom domestic players access their facilities and with third party operators are such as to enable all parties to discharge effectively their respective regulatory obligations, in particular in relation to:

- prevention of money laundering and the financing of terrorism,
- investigation of suspected cheating,
- combating of problem gambling, and
- investigation of customer complaints.

7.41 In drafting this provision, the Commission has assumed that the B2B network operator does not itself contract with players. If B2B networks do contract directly with players then the draft provision will require the following minor redrafting to accommodate that scenario.

Proposed new licence condition (only to apply where a B2B network contracts directly with players)

Poker networks and other networks

All licensees who provide facilities for gambling...in circumstances in which they do not contract directly with ~~all any of~~ the players using those facilities ('network operators') must have, put into effect and monitor the effectiveness of policies and procedures designed to ensure that:

1 every player using the facilities in Great Britain ('a domestic player') is doing so pursuant to a contract entered into between that player and the Licensee, or another holder of a Gambling Commission remote casino operating licence;

Consultation questions

- Q20. Do you agree that the condition relating to 'pooling British and non-British player liquidity' should only apply to peer-to-peer gaming networks?
- Q21. Do you agree with the Commission's approach not to restrict player liquidity to only include those players that enter via a Commission licensed operator?
- Q22. Are you aware of any examples where a B2B network operator also contracts directly with customers?

Identification of individual customers

7.42 In 2008, the Commission introduced a provision that requires remote licensees to implement policies and procedures to identify separate accounts held by the same individual. The purpose of this provision was to ensure operators complied with LCCP including requirements in respect of customer interaction, self-exclusion and financial limits.

7.43 The provision is currently split between a social responsibility code and an ordinary code provision. The social responsibility code makes it a requirement for licensees to implement the provision across all accounts held by the Commission licensee. The ordinary code sets the Commission's expectation that licensees 'take all reasonable steps' to apply the provisions of the social responsibility code to activities of group companies including activities licensed in another country. The Commission at that time accepted the industry's

view that it would be a challenge to require as a social responsibility provision, adherence with this code for group companies (includes those licensed overseas).

- 7.44** In the light of case work the Commission has been considering whether the current ordinary code provision provides suitable incentives for operators to apply social responsibility measures across account activity. There is some learning that is emerging from recent case work by the Commission that relates to the ability of operators to link accounts. In some cases there have been serious flaws in operators' capability to link customer activity that hindered their capability fulfil their obligations under the licensing objectives.
- 7.45** Therefore the Commission intends to strengthen the current provision so that remote licensees are required as a social responsibility code provision to link customer account activity with any group company of theirs. To clarify, this provision while applying to remote licensees places an obligation on that licensee to link all relevant accounts from any group company (whether remote or non-remote).
- 7.46** The Commission acknowledges that this requirement may be challenging for some and has retained the wording that requires remote licensees to 'take all reasonable steps' to apply this provision to group companies. But the Commission is also aware of developments by licensees to attempt to provide common wallets and account based gambling across their remote and non-remote products.
- 7.47** The amended provision is set out below.

Proposed amendment to existing social responsibility code provision

Identification of individual customers

All remote licences (including ancillary remote betting licences), except gaming machine technical, gambling software, ancillary remote bingo, ancillary remote casino and remote betting intermediary (trading rooms only) licences

- 1** Licensees must have and put into effect policies and procedures designed to identify separate accounts which are held by the same individual.
- 2** Where licensees allow customers to hold more than one account with them, the licensee must link all of a customer's such accounts to that customer and ensure that:
 - if a customer opts to self-exclude from one account they are excluded from all accounts they hold with the licensee
 - all of a customer's accounts are monitored and decisions that trigger customer interaction are based on the observed behaviour and transactions across all the accounts
 - where credit is offered or allowed the maximum credit limit is applied on an aggregate basis across all accounts
 - individual financial limits can be implemented across all of a customer's accounts.
- 3** Licensees which are companies or other bodies corporate must take all reasonable steps to comply with the above provision as if reference to a customer holding more than one account with them included a reference to a customer holding one or more accounts with them and one or more accounts with a group company of theirs.
- 4** A company is a 'group company' in relation to a licensee if it is the holding company of, subsidiary of, or shares a common holding company with, the licensee. For these purposes 'holding company' and 'subsidiary' have the meanings ascribed to them by section 1159 of the Companies Act 2006 or any statutory modification or re-enactment thereof.

Proposed deletion of existing ordinary code provision

Identification of individual customers

~~All remote licences (including ancillary remote betting licences), except gaming machine technical, gambling software, ancillary remote bingo, ancillary remote casino and remote betting intermediary (trading rooms only) licences~~

~~Ordinary code provision~~

~~Where a licensee:~~

- ~~i) is a company, the licensee should take all reasonable steps to comply with the above social responsibility code provision as if it also applied to accounts held in respect of gambling carried on in reliance on a remote operating licence held by any Group Company;~~
- ~~ii) also holds a licence in another jurisdiction permitting it to provide facilities for remote gambling (a 'foreign licence') or is a company one or more of whose Group Companies holds one or more foreign licences, the licensee should take all reasonable steps to comply with the above social responsibility code provision as if it applied also to accounts held in respect of gambling carried on in reliance on a foreign licence held by the licensee or any Group Company.~~

~~A company is a Group Company in relation to a licensee if it is the holding company of, subsidiary of, or shares a common holding company with, the licensee. For these purposes 'holding company' and 'subsidiary' respectively have the meanings ascribed to them by section 1159 of the Companies Act 2006 or any statutory modification or re-enactment thereof.~~

7.48 The Commission is interested in views on this proposed amendment to these provisions. Although as a social responsibility provision this carries the same weight as breach of a condition, such provisions can only extend to matters of social responsibility. However, there is considerable overlap between the pattern of play that may indicate potential problem gambling and those that indicate potential criminal activity/money laundering.

7.49 As such the Commission would like views on whether it would be helpful to replace this provision with a licence condition that expressly requires remote licensees to link accounts for the prevention of crime as well as the social responsibility aspects of LCCP.

Consultation questions

- Q23. Do you have any views on the Commission's proposal to elevate the requirement to link accounts across group companies to social responsibility code from an ordinary code provision?
- Q24. Do you think it would be helpful to instead replace the provision about identification of individual customers with a licence condition that required the linking of accounts for money laundering prevention *as well as* social responsibility provisions of LCCP?

Payment methods

7.50 As part of overall appropriate financial management, it is important that gambling operators use payment service providers that provide an appropriate standard of customer protection, controls against money laundering and so on that are set by the FCA. Experience over the past few years has suggested that payment processing can present a risk to the licensing objectives and to anti-money laundering controls.

7.51 We therefore propose a new licence condition which would restrict remote gambling operators to the use of payment processors that are authorised to do so under the Payment Services Regulations 2009 ('the Regulations'). The Regulations make it a criminal

offence for a person to provide such a service in the UK, or purport to do so, unless they are:

- an authorised payment institution or small payment institution (as defined in the 2009 Regulations);
- an European Economic Area (EEA) authorised payment institution;
- a credit institution authorised in the UK or exercising EEA rights;
- an electronic money institution which is registered in the UK as an authorised electronic money institution or small electronic money institution or is an EEA authorised electronic money institution exercising passport rights;
- the Post Office Limited;
- the Bank of England or a European central bank or national central bank of an EEA state other than the UK;
- a government department or local authority; or
- a person who is exempt under the provisions of Regulation 3 of the 2009 Regulations (credit Unions, municipal banks and the National Savings Bank.)

7.52 A 'payment service' is defined in the 2009 Regulations as including the execution of certain types of payment transaction, including those executed through a payment card or similar device. A 'payment transaction' is defined as an act (initiated by either the payer or the payee) of placing, transferring or withdrawing funds, irrespective of any underlying obligation between the payer and the payee. And 'funds' includes electronic money.

7.53 Very broadly, the criteria for authorisation as an electronic money or payment institution involve being a body corporate registered in the UK, minimum capital requirements and satisfying the FCA that there are in place sufficiently robust governance arrangements, that owners and managers are fit and proper persons and that there are sufficient procedures in place for safeguarding service users funds. All of these entities must comply with the conduct of business requirements set out in the Regulations on an ongoing basis.

7.54 The Regulations allow for passporting of an authorised payment institution. An institution which intends to exercise its passport rights for the first time in a particular EEA state must give the FCA a notice of its intention in such form as the FCA may require. The FCA must then inform the host state's competent authority of the payment institution's details. Regulation 24 governs the registration of an EEA branch, registration of which may be refused if (taking into account any information received from the host state's competent authority) there are reasonable grounds to suspect a risk of money laundering.

7.55 We consider the new proposed licence condition to meet the aims of ensuring that adequate protection is in place for customers and that adequate money-laundering controls are also in place. Since most remote gambling operators would be using payment service providers that would meet the criteria of the draft licence condition, we do not consider this to be an onerous burden on operators.

7.56 Passporting arrangements obviously apply only to EEA states since the Payment Services Regulations implemented the Payment Services Directive, establishing the same set of rules across the EEA on information requirements and other rights and obligations that will be applicable to many payment services transactions in the EEA. We are interested to hear of any operator which uses payment services outside this system of regulation and any possible means of assuring that the same standards is applied to payment services outside the EEA which an operator wishes to use.

Cash handling and payment methods – proposed new licence condition

All remote casino, bingo and betting operating licences, except ancillary and remote betting intermediary (trading room only) licences

Licensees should only accept payment from customers using their gambling facilities in Great Britain by a method which involves the provision of payment services as defined in Schedule 1 Part 1 of the Payment Services Regulations 2009 (SI 2009 No 209) if the provider of those services is a 'payment service provider' within the definition of that term in regulation 2 of those regulations.

Consultation question

- Q25. Do you have any comments on the draft licence condition proposing that remote operators use only those payment service providers within the definition of regulation 2 of the Payment Services Regulations 2009?
- Q26. Do you use an additional payment processor that would NOT meet the proposed new condition but which you consider to be an appropriate form of payment service?

Display of licensed status

- 7.57** Remote licensees offering gambling on websites are required to display certain information on their website explaining that they are licensed by the Commission and stating their licence number and a link to the Commission website. These provisions are set out in full in the condition below and will be retained.
- 7.58** The Commission also added an additional requirement in 2008 (see (c) of the condition below) to ensure licensees are clear about which aspects of their website are licensed by the Commission and which aspects are not licensed by the Commission. This was in response to consumer confusion about where different products are regulated.
- 7.59** The Bill reforms require that operators that transact with or advertise to British consumers are licensed by the Commission. As such the requirement under (c) to distinguish between which products are licensed by the Commission is no longer necessary as gambling should only be provided to British consumers by a Commission licensee. As such the Commission proposes to remove requirement (c) in the current condition, as set out below.

Proposed amended licence condition

Deletions marked as ~~striketrough~~.

Display of licensed status

All remote bingo, casino, general betting, betting intermediary and pool betting operating licences, except ancillary remote licences and remote betting intermediary (trading rooms only) licences

Licensees offering gambling on websites must:

- a) display the following information on a page which, by virtue of the construction of the website, customers access before gambling:
- (i) a statement that they are licensed and regulated by the Gambling Commission
 - (ii) their licence number and
 - (iii) a link to the Gambling Commission's website

b) display at least the information at (i) above on each page of the website which offers facilities for gambling in reliance on the licence

~~c) where they offer on pages of the website, or by means of a link from the website, facilities for gambling which are not provided in reliance on their Gambling Commission licence, clearly distinguish those products which are regulated by the Commission from those which are not.~~

Consultation question

Q27. Do you agree with the Commission proposals to remove (c) from the current licence condition about the display of licensed status?

Other relevant changes

7.60 As set out earlier in this document, there is a separate consultation on the requirements that the Commission considers appropriate to place on all operators in relation to the protection of customer funds. This separate consultation is particularly relevant for remote operators, and we would encourage remote operators to respond to both consultations where appropriate. In addition, although this section relates specifically to remote operators, those operators should consider the amendments of this full consultation document, as many of those outlined will also apply to remote operators.

8 Amendments specific to lottery operators and lottery managers

- 8.1 The Commission's LCCP contain a wide range of general provisions which apply to a number of categories of operators. Lottery operators are therefore subject to a number of general requirements, for example the requirements in relation to marketing apply equally to lotteries in order to ensure that lottery marketing is socially responsible. Similarly the requirements relating to complaints and disputes apply to lottery operators. Of course, there is a degree of flexibility within all of those general provisions to enable operators to implement the requirements in a manner appropriate to their business.
- 8.2 In addition to these general provisions, an existing licence condition (licence condition 11 in the current LCCP, published December 2011) pulls together many of the provisions which are specific to lotteries. The current licence condition 11 applies to **both** society and local authorities, and to external lottery managers, though some elements are relevant only for either the society or the manager.
- 8.3 The Commission has concerns that in some cases the division of responsibilities between the society and external lottery manager has not in practice been implemented in the manner originally intended when licence condition 11 was introduced. We therefore propose to restructure this licence condition, by separating out those elements which apply only to society and local authority lotteries and those which apply only to external lottery managers. In this way, the Commission will reemphasise, for example, that even where a society lottery has appointed an external lottery manager to make the required lottery submissions to the Commission, the responsibility to ensure that correct information is provided rests with the society lottery.
- 8.4 In addition to these structural changes, the Commission has taken the opportunity to clarify some aspects of the provisions which apply particularly to lotteries. For example, we have amended the sentence which explains that lottery tickets may be sold door to door, and from a kiosk in a street but not by an individual in a street itself (see item 12 in the box below).
- 8.5 These points of clarification also include changes intended to specify more clearly the requirements for accounting records and submissions to the Commission.
- 8.6 Although there are no significant departures from the original policy intentions within this new amended provision, we would ask lottery operators to carefully consider the revised structure to ensure that the standards which the Commission expects society lotteries and managers to reach are clear and unambiguous. We will use the consultation period to consult stakeholders on whether there are any unintended consequences of this restructure.
- 8.7 In the box below is the proposed amended licence condition for society lotteries and local authorities.

Proposed amended licence condition

Lotteries – societies and local authorities

All lottery operating licences issued to non commercial societies or local authorities

1 Licensees must ensure that at least 20% of the proceeds of any lottery promoted in reliance on the licence are applied to a purpose for which the promoting non-commercial society is conducted or the promoting local authority has power to incur expenditure.

2 The proceeds of any lottery promoted in reliance on this licence must not exceed £4,000,000 and the aggregate of the proceeds of lotteries promoted wholly or partly in a calendar year in reliance on the licence must not exceed £10,000,000.

3 The rules of any lottery promoted in reliance on this licence must be such as to ensure:

- i.** that it is not possible for the purchaser of a ticket in the lottery to win by virtue of that ticket (whether in money, money's worth, or partly the one and partly the other and including any winnings arising from a rollover) more than:
 - a.** £25,000
 - b.** if more, 10% of the proceeds of the lottery.
- ii.** that membership of the class among whom prizes are allocated does not depend on making any payment (apart from payment of the price of a ticket).

4 A lottery promoted in reliance on this licence must not be linked to any other lottery, free draw or prize competition.

5 For the purposes of this condition:

- ii.** two or more lotteries are linked if any of them is so structured that a person who wins a prize in that lottery will also win a prize in some or all of the others, unless the maximum amount which a person can win is no more than £400,000 in aggregate. In determining whether two or more lotteries are linked it is immaterial how many of them are promoted in reliance on this licence
- iii.** a lottery is linked to a free draw or prize competition if:
 - a.** a person's participation in, or his being allocated a prize in, the lottery is a means of establishing his eligibility to enter the draw or competition and
 - b.** the arrangements for the lottery and/or the draw or competition are such that a person may win more than £400,000 in aggregate as a result of his participation in the lottery and the draw or competition.

6 If a lottery, whilst not a linked lottery, has the feature that by selecting the same numbers, or combination of numbers in the lottery and in one or more other lottery or lotteries the participant in those lotteries may win prizes which, in aggregate, exceed £400,000, no advertisement for, nor other marketing of, the lottery may make any reference to that feature.

7 Licensees must ensure that each person who purchases a ticket in a lottery promoted in reliance on this licence receives a document which:

- i.** identifies the promoting society
- ii.** states the name and address of a member of the society who is designated, by persons acting on behalf of the society, as having responsibility within the society for the promotion of the lottery
- iii.** either states the date of the draw (or each draw) in the lottery, or enables the date of the draw (or each draw) in the lottery to be determined.

8 Licensees must display 'licensed by the Gambling Commission' and details of the Gambling Commission website on lottery tickets.

9 The price payable for purchasing each ticket in a lottery promoted in reliance on this licence:

- i.** must be the same
- ii.** must be shown on the ticket or in a document received by the purchaser; and
- iii.** must be paid to the promoter of the lottery before any person is given a ticket or any right in respect of membership of the class among whom prizes are to be allocated.

10 For the purposes of these conditions, reference to a person receiving a document includes a reference to a message being sent or displayed to him electronically in a manner which enables him, without incurring significant expense or delay, to:

- i.** retain the message electronically, or
- ii.** print it.

11 Licensees must lodge with the Commission a description of, and a copy of the rules of, any lottery intended to be promoted in reliance on this licence, and any amendment to the rules of a lottery previously notified to the Commission, at least 28 days before any tickets in such lottery, or amended lottery, are put on sale.

12 Lottery tickets must not be sold to a person in any street. For these purposes 'street' includes any bridge, road, lane, footway, subway, square, court, alley or passage (including passages through enclosed premises such as shopping malls) whether a thoroughfare or not. But, by way of exception, tickets may be sold in a street from a static structure such as a kiosk or display stand. Tickets may also be sold door to door. Licensees must ensure that they have any necessary local authority permissions, such as a street trading licence.

13 Accurate accounting records must be kept in relation to all lotteries promoted in reliance on this licence showing:

- i. the total proceeds of each lottery,
- ii. the amount allocated to prizes in each lottery,
- iii. the amount of proceeds allocated to expenses, and details of those expenses, for each lottery,
- iv. the amount applied directly to the purposes of the society or purposes for which the local authority has power to incur expenditure as the case may be, and
- v. the number of sold and unsold tickets in each lottery.

14 Such records must be made available to the Commission for inspection on request and retained for at least three years from the date of any lottery to which they relate.

15 In addition, in respect of each lottery promoted in reliance on this licence, a lottery submission must be sent to the Commission within three months of the date of determination of the lottery or, in the case of an 'instant lottery', within three months of the last date on which tickets in the lottery were on sale providing the information set out in the preceding paragraph of this condition. Every such submission must contain or be accompanied by a declaration that the information given in it is correct and must be shown to have been approved before submission by:

- i. the holder of a personal management licence,
- ii. a 'qualified person' as defined in the Gambling Act 2005 (Definition of Small scale Operator) Regulations 2006, or
- iii. except where the licensee is a local authority, the designated person named on the lottery tickets as having responsibility for the promotion of the lottery.

16 Where a society or local authority instructs an External Lottery Manager to make the submission on their behalf, they must ensure that the details on the submission are approved by one of the people named above from the relevant society or local authority.

17 For any calendar year in which the cumulative proceeds of lotteries promoted in reliance on this licence exceed £1,000,000 the licensee must provide the Commission with written confirmation from a qualifying auditor confirming that the proceeds of those lotteries have been fully accounted for in their annual audited accounts. Such confirmation must be provided within ten months of the date to which the accounts are made up.

18 A qualifying auditor means a person who is eligible for appointment as a statutory auditor under section 1212 Companies Act 2006 or any statutory modification or re-enactment thereof but, in the case of a lottery promoted by or on behalf of a non-commercial society, is not:

- i. a member of the society
- ii. a partner, officer or employee of such a member or
- iii. a partnership of which a person falling within (a) or (b) is a partner.

Consultation question

Q28. Do you have any comments on the proposed amended licence condition which consolidates lottery-specific provisions for **all society lotteries and local authority lotteries**?

- 8.8** The next box includes the lottery licence condition that will apply only to external lottery managers. Items 13 and 14 of this provision relate to the protection of lottery proceeds when held by a lottery manager on behalf of the society. This is intended to ensure that the lottery manager handles lottery proceeds appropriately, maintains separation from their own trading income and puts in place a trust or equivalent to ensure the lottery proceeds they hold will be paid to the society in the event of the lottery manager's insolvency.
- 8.9** For more information on this provision, please see the separate consultation issued alongside this document . That separate consultation explores the options for the protection of customer funds and for the protection of lottery proceeds - both of which are relevant for lottery operators and external lottery managers.

Proposed amended licence condition

Lotteries - managers

All lottery operating licences issued to external lottery managers

- 1** Licensees must ensure that at least 20% of the proceeds of any lottery promoted in reliance on the licence are paid to the promoting non-commercial society or local authority to apply to a purpose for which the promoting society is conducted or the local authority has power to incur expenditure.
- 2** The proceeds of any lottery promoted in reliance on this licence must not exceed £4,000,000 and the aggregate of the proceeds of lotteries promoted wholly or partly in a calendar year on behalf of the same non-commercial society or local authority in reliance on the licence must not exceed £10,000,000.
- 3** The rules of any lottery promoted in reliance on this licence must be such as to ensure:
 - i.** that it is not possible for the purchaser of a ticket in the lottery to win by virtue of that ticket (whether in money, money's worth, or partly the one and partly the other and including any winnings arising from a rollover) more than:
 - a.** £25,000
 - b.** if more, 10% of the proceeds of the lottery.
 - ii.** that membership of the class among whom prizes are allocated does not depend on making any payment (apart from payment of the price of a ticket).
- 4** A lottery promoted in reliance on this licence must not be linked to any other lottery, free draw or prize competition.
- 5** For the purposes of this condition:
 - i.** two or more lotteries are linked if any of them is so structured that a person who wins a prize in that lottery will also win a prize in some or all of the others, unless the maximum amount which a person can win is no more than £400,000 in aggregate. In determining whether two or more lotteries are linked it is immaterial how many of them are promoted in reliance on this licence
 - ii.** a lottery is linked to a free draw or prize competition if:
 - a.** a person's participation in, or his being allocated a prize in, the lottery is a means of establishing his eligibility to enter the draw or competition and
 - b.** the arrangements for the lottery and/or the draw or competition are such that a person may win more than £400,000 in aggregate as a result of his participation in the lottery and the draw or competition.

6 If a lottery, whilst not a linked lottery, has the feature that by selecting the same numbers, or combination of numbers in the lottery and in one or more other lottery or lotteries the participant in those lotteries may win prizes which, in aggregate, exceed £400,000, no advertisement for, nor other marketing of, the lottery may make any reference to that feature.

7 Licensees must ensure that each person who purchases a ticket in a lottery promoted in reliance on this licence, or promoted on behalf of a society in reliance on this licence, receives a document which:

- i.** identifies the promoting society
- ii.** states the name and address of a member of the society who is designated, by persons acting on behalf of the society, as having responsibility within the society for the promotion of the lottery
- iii.** either states the date of the draw (or each draw) in the lottery, or enables the date of the draw (or each draw) in the lottery to be determined.

8 Licensees must display 'licensed by the Gambling Commission' and details of the Gambling Commission website on lottery tickets.

9 The price payable for purchasing each ticket in a lottery promoted in reliance on this licence:

- i.** must be the same
- ii.** must be shown on the ticket or in a document received by the purchaser; and
- iii.** must be paid to the promoter of the lottery before any person is given a ticket or any right in respect of membership of the class among whom prizes are to be allocated.

10 For the purposes of these conditions, reference to a person receiving a document includes a reference to a message being sent or displayed to him electronically in a manner which enables him, without incurring significant expense or delay, to:

- i.** retain the message electronically, or
- ii.** print it.

11 Licensees must lodge with the Commission a description of, and a copy of the rules of, any lottery intended to be promoted in reliance on this licence, and any amendment to the rules of a lottery previously notified to the Commission, at least 28 days before any tickets in such lottery, or amended lottery, are put on sale.

12 Lottery tickets must not be sold to a person in any street. For these purposes 'street' includes any bridge, road, lane, footway, subway, square, court, alley or passage (including passages through enclosed premises such as shopping malls) whether a thoroughfare or not. But, by way of exception, tickets may be sold in a street from a static structure such as a kiosk or display stand. Tickets may also be sold door to door. Licensees must ensure that they have any necessary local authority permissions, such as a street trading licence.

13 Licensees must have arrangements in place to ensure separation between lottery proceeds they hold on behalf of non-commercial societies or local authorities and their own trading income and that such lottery proceeds are legally protected by means of separate bank accounts having trustee status or equivalent legal protection for each society or local authority in the event of the Licensee's insolvency, in which event the proceeds will be paid to the society or local authority.

14 Licensees must ensure that following the determination of a lottery all lottery proceeds are properly allocated between prizes, expenses and have procedures in place designed to ensure that lottery profits belonging to non-commercial societies or local authorities whose lotteries they manage in reliance on this licence are accounted for in a timely manner to the society or local authority.

Consultation questions

- Q29. Do you have any comments on the proposed amended licence condition which consolidates lottery-specific provisions for **lottery managers**?
- Q30. We would welcome the participation of the lottery sector in the separate consultation on the protection of customer funds. However, are there any comments on items 13 and 14 of the provision for lottery managers, which sets out the requirements for the protection of lottery proceeds held by the lottery manager?

9 Amendments specific to non-remote betting, bingo and casino operators

- 9.1 This section sets out some minor points of clarification that are relevant for the non-remote betting sector in particular. One of the proposed changes (set out in paragraph 9.9) to the ordinary code provision for Primary Gambling Activity applies to bingo and casino operators as well as non-remote betting operators.

Primary gambling activity

- 9.2 The Commission considers that in order to make category B2 gaming machines available in premises, betting must be the primary gambling activity provided at those premises at times when the gaming machines are made available. In making judgements about whether betting is indeed the primary gambling activity offered - and ultimately whether the business is in fact a betting business - the Commission will take into account both the expected and actual use of the betting facilities being provided. In summary, what matters is whether there are, or are intended to be, sufficient facilities for betting to constitute a betting business (as opposed to a gaming machine business, which would require different licences and confer different gaming machine entitlements).
- 9.3 The Commission reinforced this understanding of the Act in May 2009 with the introduction of licence condition 16 of LCCP to all holders of this particular operating licence, following two periods of extensive consultation with industry.
- 9.4 Since 2009, it has become clear that the last paragraph of licence condition 16 has been a source of confusion. This is because the paragraph refers to a scenario where facilities for betting are provided only by means of self-service betting terminals ('SSBTs')
- 9.5 The use of SSBTs is a form of remote communication, therefore a betting premises which relies wholly on the use of SSBTs for the making and accepting of bets would require a remote operating licence only, which would not confer any entitlement to make gaming machines available for use. Where an operator chooses to use SSBTs as part of their operating model alongside non-remote facilities, they will require the relevant ancillary remote operating licence in addition to their non remote general betting standard licence.
- 9.6 We recognise, however, that the condition needs to be made clearer to give effect to our policy intention and to take account of a recent 1st Tier Tribunal judgment that turned on the construction of the current licence condition. We therefore propose to delete part of the current condition and qualify the reference to sufficiency of facilities to make clear that it is the facilities provided under the non-remote operating licence (as opposed to any other type of licence) that go towards satisfying the licence condition.
- 9.7 These and similar issues are also addressed in an updated Gambling Commission advice note on the *Indicators of betting as primary gambling activity* which will be published shortly and will be available on our website and distributed to relevant stakeholders.
- 9.8 We will also be publishing a document providing advice for remote, non-remote and betting intermediaries. This document will include further information on the regulatory framework for SSBTs.

Proposed amended licence condition

Additions are marked in **bold**, deletions are marked as ~~strikethrough~~

Primary Gambling Activity

Non-remote general betting licences, except where betting is offered under a 2005 Act casino premises licence

1 Gaming machines may be made available for use in licensed betting premises only at times when there are available sufficient facilities for **non-remote betting in reliance on this licence available**.

2 Such facilities for betting must include the provision of information that enables the customer to access details of the events on which bets can be made and to be able to place those bets, obtain details of the outcome of the events, calculate the outcome of their bets and be paid or credited with any winnings.

3 ~~Where licensees provide facilities for betting only by means betting machines (machines which are designed or adapted for the purpose of making or accepting bets on future real events) the licensee must ensure that the number of betting machines is greater than the number of gaming machines which are made available for use in reliance on the premises licence.~~

9.9 Clarifications are also proposed for ordinary code provision 9: these changes are set out in the box below. These amendments would apply to non-remote betting operators, and bingo and casino operators.

Extract from proposed amended ordinary code provision 9

Additions are marked in **bold**, deletions are marked as ~~strikethrough~~

Primary Gambling Activity

Non-remote general betting, bingo and casino operating licences, except where facilities are offered under a 2005 Act casino premises licence

1 In order to demonstrate that **sufficient facilities for** the primary gambling activity for which an operating licence has been issued **are being made available** ~~is being offered~~ in each licensed premises, licensees should have regard to the following general factors:

- ratio of the space available to customers allocated to the primary gambling activity, to that allocated to other gambling activities
- the extent to which the primary gambling activity is promoted on the premises and by way of external advertising compared to other gambling activities
- the use, either expected or actual, to be made of the different gambling facilities.

Consultation question

Q31. Do you have any comments on the clarifications that are proposed for current licence condition 16 and current ordinary code 9 relating to primary gambling activity?

Display of rules on tracks

9.10 Both tracks and bookmakers are required to make information available to customers about the terms or rules of betting. The mandatory premises licence conditions for tracks include a requirement that the terms on which a bet may be placed must be displayed in a prominent place within the premises to which customers wishing to use facilities for betting

have unrestricted access'. On-course bookmakers are similarly required by a social responsibility code (currently code 3) to set out within rules that they make available the core elements for the acceptance and settlement of bets.

9.11 In addition, the current LCCP requires that when providing on-course betting, licensees must display any rules that differ from the standard rules which apply. In the current provision, the standard rules for horse-racing tracks are referred to (Tattersalls' Rules on Betting) and for greyhound tracks there is a reference to what was understood at the time to be the standard rules (British Greyhound Racing Board's Regulations for the conduct of on course bookmaking).

9.12 However, the British Greyhound Racing Board no longer uses these regulations. Equally, many individual tracks have or plan to implement standard place terms at tracks, which may be very similar but not identical to Tattersalls' standard terms. As a result, we propose to amend the relevant social responsibility provision to ensure that the reference is to the relevant racecourse rules. In this way, the effect of the requirement is as intended – to ensure that customers are made aware of any rules for a specific on-course bookmaker that deviates from the standard/ expected rules in place at the track.

Display of rules on tracks – extract of proposed amended social responsibility code

3 'Fair and open' provisions

Additions marked in **bold** and deletions marked as ~~strikethrough~~.

All non-remote general betting licences

When providing facilities for betting on-course, licensees must display on their 'joints' in an intelligible format:

- any rules that differ from **the relevant racecourse rules on betting, such as** Tattersalls' 'Rules on Betting' or ~~the British Greyhound Racing Board's 'Regulations for the conduct of on-course bookmaking'~~ as applicable¹
- any types of unorthodox bets accepted (such as forecast betting, betting without the favourite, distance betting etc)
- whether win-only or each way bets are accepted
- any concessions or bonuses offered
- all of the runners and the odds available to the public
- the operator's trading name and contact address
- the minimum bet accepted
- the maximum guaranteed liability.

¹The references to Tattersalls' 'Rules on Betting' and ~~the British Greyhound Racing Board's Regulations for the conduct of on-course bookmaking~~ reflect the current position and may need to be amended in future.

Consultation question

Q32. Do you have any comments on the proposed amendment relating to display of rules by on course bookmakers, to ensure that the references to track rules for horse and greyhound racing are updated and future-proofed?

10 Responding to this consultation

- 10.1** The Commission is committed to full and open consultation and would welcome comments on any aspect of this document. A response template will be available [on our website](#). The Commission would prefer respondents to complete the response template provided and send it by email to: consultation@gamblingcommission.gov.uk
- 10.2** Alternatively, responses can be sent by post to:
Consultation
Gambling Commission
Victoria Square House
Victoria Square
Birmingham
B2 4BP
- 10.3** The deadline for responses to this paper is **Wednesday 4 December 2013**. Please use the response template provided on our website if possible. Respondents are of course welcome to comment on only one or some of the topics addressed by this consultation.
- 10.4** When responding, please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of an organisation, please make clear who that organisation represents. If responding as an individual, please mention your own interest.
- 10.5** 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 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, the Commission will assume your consent overrides any confidentiality disclaimer that is generated by your organisation's IT system.
- 10.6** 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.
- 10.7** 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, local 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 do so.

Keeping gambling fair and safe for all

For further information or to register your interest in the Commission please visit our website at:
www.gamblingcommission.gov.uk

Copies of this document are available in alternative formats on request.

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