

# GAMBLING COMMISSION

**Outcome of consultation on amendments  
to the Gambling Commission's:**

***Statement of principles for licensing  
and regulation***

***Licensing, compliance and enforcement  
policy statement***

**Responses document**

March 2015

# Contents

<b>1</b>	<b>Introduction</b>	<b>3</b>
<b>2</b>	<b>Issues relating to the Statement of principles for licensing and regulation</b>	<b>4</b>
<b>3</b>	<b>Issues relating to the Licensing, compliance and enforcement policy statement</b>	<b>8</b>
	<b>Appendix A</b>	<b>11</b>
	Text of the Statement of Principles for licensing and regulation March 2015, highlighting the amendments	
	<b>Appendix B</b>	<b>28</b>
	Text of the Licensing, compliance and enforcement policy statement March 2015, highlighting the amendments	
	<b>Appendix C</b>	<b>60</b>
	List of respondents to the consultation	

# 1 Introduction

- 1.1 During the latter half of 2014, we consulted on proposed amendments to the Gambling Commission's (the Commission's) *Statement of Principles for licensing and regulation* and the *Licensing, compliance and enforcement statement*. These statements were last published in 2009. We proposed in the consultation document to amend and update the statements, in particular to take into account of:
- the new Regulators' Code
  - the Commission's experience since the documents were last published in 2009
  - internal structural changes to improve the Commission's operation
  - an emphasis on early resolution of issues
  - feedback from the industry.
- 1.2 The consultation closed on 30 September 2014 and we received 14 responses during the consultation period from a range of trade associations and operators, 1 licensing body, 1 campaign group and 1 individual. A list of respondents to the consultation is attached at Appendix C.
- 1.3 This document summarises the key issues emerging from the consultation and the action we have taken as a result. Some amendments have been made as a result of queries and comments made by respondents during the consultation and we have also taken the opportunity to tidy the drafting further in the light of consultation responses.
- 1.4 Alongside this document, we publish *Statement of Principles for licensing and regulation March 2015* and the *Licensing, compliance and enforcement statement March 2015*, both of which come into effect immediately and are available on our website separately.
- 1.5 In Appendix A and B within this document, we have included the text of these statements and have highlighted the amendments that have been made compared to the 2009 statements.

## 2 Issues relating to the Statement of principles for licensing and regulation

### Consultation proposals

- 2.1** Section 23 of the Act requires the Commission to prepare, publish and keep under review a statement that sets out the principles which will govern the exercise of its functions. In particular, the Statement of principles must explain how the principles adopted by the Commission will assist the pursuit of the licensing objectives.
- 2.2** The consultation document set out proposed amendments to the Statement of Principles to reflect the Commission's updated approach in three key areas: enhanced compliance, voluntary settlement and publicity. These amendments were broadly welcomed by respondents and have been adopted in the final documents. The Statement of Principles had been structured in five chapters with amendments to each chapter as summarised below.
- 2.3** **Chapter 1** explains the purpose of the statement, the licensing objectives, the statutory requirements and better regulation principles, and the Commission's jurisdiction and statutory functions under the Act. The consultation document proposed amendments to explain that information about the exercise of the Commission's functions in relation to the National Lottery can be found at [www.gamblingcommission.gov.uk](http://www.gamblingcommission.gov.uk),<sup>1</sup> rather than in the Statement of principles.
- 2.4** **Chapter 2** sets out the general principles governing the Commission's work, including the requirement to regulate gambling in the public interest, the adoption of a risk-based approach and the focus on preventative activity. The amendments proposed in the consultation document relating to this chapter included:
- updating references to external bodies
  - explaining the Commission's approach to the consideration of economic growth in so far as it is consistent with the licensing objectives
  - an addition to the section on preventative measures to reflect that the Commission may issue public statements about topics which may offer lessons to operators or the public
  - the addition of an explicit statement that the Commission will take coordinated regulatory action with government bodies and/or other regulators where it is appropriate to do so
  - similarly, the addition of an explicit statement that the Commission will share information with other bodies, where appropriate
  - the addition of an explanation that the outcome of debt proceedings against an operator may be taken into account by the Commission if it gives rise to questions about a licensee's suitability to hold a licence.
- 2.5** **Chapter 3** sets out the principles that the Commission will apply when carrying out its licensing functions. The chapter covers the duties of applicants to be open and cooperative, the relevance of criminal convictions, the ways in which applicants will be notified of decisions, and the principles governing the publication of decisions. The proposed amendments to this chapter were:
- the addition of new paragraphs clarifying what the Commission expects from applicants. We explained that whilst the Commission will attempt to support applicants through the process and will aim to determine applications in good time, the responsibility to provide information remains with the applicant and an application may be refused on the basis of insufficient information

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<sup>1</sup> Information on the Gambling Commission's functions in relation to the National Lottery is currently available on the [National Lottery Committee page of our website](#).

- an explicit statement that the Commission expects applicants to work with the Commission in an open and cooperative way and to disclose anything which the Commission would reasonably expect to know
- an explanation that the Commission normally grants a licence to those who intend to provide facilities for gambling under that licence
- a new paragraph which sets out that, where an operator is required to have Personal Management Licence holders in specified management offices, the Commission would normally expect that the person who occupies the Head of Compliance role will not also occupy one of the other specified management offices
- paragraphs which consolidate the information in the document about the Commission's approach to publishing licensing decisions, including both the register of licensees and information about refused or withdrawn applications, if there is a public interest to do so.

**2.6 Chapter 4** sets out the principles that the Commission will apply in exercising its regulatory functions under the Act. The chapter sets out the expectations of the Commission regarding holders of operating licences, personal management licences and personal function licences. It also sets out the principles underpinning the voluntary settlement procedure. The proposed amendments were to:

- include new paragraphs setting out the expectations for both senior management/ personal management licensees and personal functional licensees
- expand the explanation of the Commission's approach to publicising information about regulatory decisions or actions.

**2.7 Chapter 5: Promoting the licensing objectives** explains how the principles will help the Commission to promote the three licensing objectives under the Act. Only minor amendments were proposed for this chapter.

### Consultation question

**Q1.** Do you have any comments on the proposed changes to the Statement of principles for licensing and regulation?

### Respondents' views

**2.8** Respondents broadly welcomed the Commission's general approach to updating the *Statement of principles for licensing and regulation*, as outlined in the consultation document. In particular, most respondents supported the inclusion of references to the Commission's consideration of economic growth as part of the decision-making process; and welcomed the use of alternative compliance approaches such as voluntary settlements. One respondent agreed with all of the proposed amendments and one respondent had identified no objections to any of the proposals from their stakeholders.

**2.9** A few respondents welcomed the amendment to the Statement to reflect that an operator's overseas activity may be relevant for the Commission's assessment of their suitability to obtain or maintain a licence from the Commission.

**2.10** In relation to economic growth, one non-industry respondent commented that the Commission is too keen to take account of economic growth; and that there were signs of a '*laissez-faire*' attitude to gambling, which represents a real risk to consumers. However, most of the remaining respondents (who were mostly operators or industry trade associations) considered that the amendments to the statement did not go far enough to meet the duty under the new Regulators' code to have regard to economic growth when making decisions. Some respondents called for the word desirability to be removed from the statement '*In deciding what action to take, and whether action should be taken at all,*

*the Commission will have regard to the desirability of promoting economic growth and its duty to permit gambling in so far as the Commission thinks it reasonably consistent with pursuit of the licensing objectives’.*

- 2.11** A number of these respondents also commented that the decision to not support operators when they are the victims of crime is unfair and it looks like the Commission is supporting the view that crimes against operators are ‘victimless’. They also highlighted that there is great difficulty in engaging police interest in such crime.
- 2.12** A few respondents asked the Commission to acknowledge and take account of the fact that a licensing review without a reason (and other similar actions – such as publishing a register of withdrawn applications) can be very damaging to licensee’s reputation in a manner that is disproportionate to the situation.
- 2.13** Further detailed comments were made, the most significant of which are summarised as follows:
- the Statement of principles should contain more of an emphasis on advertising issues
  - insufficient distinction is made between social responsibility codes and ordinary codes in the references in the Statement of Principles.

## **The Commission’s position**

### **Consideration of economic growth**

In considering the new Regulators’ Code, the Commission carefully considered the extent to which the promotion of growth should be embedded in our Statement of principles for licensing and regulation. As we have explained in submissions to Parliament in the context of the Deregulation Bill: *‘The conditions for economic growth (in the gambling industry) require public confidence in our role as an independent regulator. Fundamental to public confidence, and therefore growth, is that the regulator is, and is seen to be, wholly independent, impartial and objective...there is a risk that the concept of the desirability of economic growth becomes confused or conflated with the promotion of the commercial interests of specific economic sectors. If it appears to the public that it is any part of the Commission’s role to promote the industry - as opposed to permitting the industry to promote itself and grow so far as is compatible with consumer protection, the likely outcome is a reduction in public confidence and a consequent reduction in the public acceptance of gambling as a main stream leisure activity.’*<sup>2</sup>

This is a point which was also made very clearly by the Culture, Media and Sport Select Committee in its report *The Gambling Act 2005: A bet worth taking?*, 24 July 2012<sup>3</sup>.

We do consider that it is appropriate for the Commission to have regard to the desirability of promoting economic growth alongside our duty to permit gambling in so far we think reasonably consistent with pursuit of the licensing objectives and have explained above how we propose to approach this. We have therefore retained this reference in the final *Statement of principles of licensing and regulation March 2015*.

### **Tackling crime against operators**

Following the consultation, we have amended the paragraph which explains that the Commission does not generally take action to tackle crime against operators (unless customers are also affected) to make clear that this is because we wish to target our resources where they can be most effective. We do not consider crime against operators to be a victimless crime.

<sup>2</sup> The full submission and oral evidence from the Commission is available on the Parliament website at: <http://www.parliament.uk/documents/joint-committees/draft-deregulation-bill/JCDDDBVolume1Evidence.pdf>

<sup>3</sup> [The Gambling Act 2005: A bet worth taking?](#)

## **The perception of licence reviews**

The Commission does take into account the perception amongst some that a licence review must inevitably be a negative decision by the Commission. However, we wish to encourage a move away from this perception. For example, the Commission might conduct reviews to learn more about a sector or theme. To help to move away from the instant negative perception of a licence review, it is important for the Commission to be transparent (publicly if appropriate) about the reason for the review and nature of possible outcomes.

### **Detailed issues**

We agree with the respondent who commented that the regulation of gambling advertising and marketing is an important aspect of the Commission's role (alongside the work of and in partnership with the relevant advertising regulators). However, the Statement already contains references to advertising issues, including that the Commission will produce codes to ensure that appropriate advertising codes continue to be in place to prevent consumers from being misled (in the section entitled Ensuring gambling is conducted in a fair and open way, paragraphs 5.13 – 5.20 of the Statement). Given that the Statement is intended to set out high-level principles, we do not agree that further amendment is needed to the Statement to reflect advertising issues.

We have recently published [Strengthening social responsibility](#), which explains some strengthening of the Licence Conditions and Codes of Practice which relate to marketing and advertising. These changes come into force on 8 May 2015.

Finally, in response to comments from respondents, we have made some amendments to the Statement at paragraph 5.27 to explain better the difference between social responsibility code provisions (which have the effect of licence condition and are therefore requirements), and the ordinary code provisions which set out good practice and which should be followed unless there is an alternative equally good or better approach for the operator's specific circumstances.

The revised text of the statement, with the amendments highlighted, is set out at Appendix A of this document.

### 3 Issues relating to the Licensing, compliance and enforcement policy statement

#### Consultation proposals

- 3.1 The Licensing, compliance and enforcement policy statement should be read in conjunction with *Statement of principles for licensing and regulation*, which it builds on by setting out the Gambling Commission's regulatory policies in relation to:
- assessing risk
  - licensing operators and key personnel
  - carrying out compliance activities
  - enforcement.
- 3.2 The consultation document set out proposed changes in particular to chapter 5 on regulatory enforcement, to reflect the Commission's emphasis on early resolution of issues through enhanced compliance and voluntary settlement. In addition, an entirely new chapter on publicity was proposed (chapter 7) for consideration during the consultation period.

#### Chapter 5 – enhanced compliance and voluntary settlements

- 3.3 The proposed changes to chapter 5 of the policy statement reflected the Commission's desire to resolve matters quickly and effectively where possible, always in a manner which fulfils the Commission's statutory obligations and is consistent with the licensing objectives:
- New paragraphs were added to explain further our enhanced compliance approach. Where concerns have been raised about an operator, and a decision has not yet been taken to carry out a licence review, the Commission is open to the possibility of resolving matters by means that fall short of formal sanction. In those cases where enforcement action is not taken and/or a formal review is not commenced, the Commission will expect the operator to act promptly to take the necessary remedial action.
  - Similarly, information was added to reflect the Commission's use of voluntary settlements as a regulatory decision, the terms of which are accepted by the licensee concerned. Voluntary settlements in the Commission context are not the same as 'out of court' settlements in the commercial context. When agreeing the terms of a settlement, the Commission will carefully consider its statutory duties and other relevant matters such as the importance of sending clear, consistent messages through enforcement action, and will only settle in appropriate cases where the agreed terms of the decision result in acceptable regulatory outcomes. It may be particularly important in this respect to provide redress to consumers who may have been disadvantaged by an operator's misconduct, or to relieve operators of the profits or gross gambling yield resulting from their misdeeds. In many circumstances, voluntary settlements will result in some degree of publicity (an explanation of which is set out in the new Chapter 7), unlike commercial out of court settlements, which are often confidential.

#### Chapter 7 – Publicity

- 3.4 The new chapter 7 which was added to the licensing, compliance and enforcement statement reflects publicity's central role in improving compliance in and beyond the licensed community, and in increasing confidence in the Commission as a regulator. It also reflected the Commission's aim to act in an open and transparent manner.



- 3.5** Openness and transparency are central to the Commission's work in upholding the licensing objectives. Publication of details of the Commission's work in licensing, compliance and enforcement plays an important role in improving compliance in and beyond the licensed community, and in increasing confidence in the Commission as a regulator.

### Consultation questions

- Q2.** Do you have any comments on the minor amendments and points of clarification for the chapters on risk, licensing, compliance and criminal investigations (chapters 2, 3, 4 and 6 respectively)?
- Q3.** Do you have any comments on the changes to chapter 5 on regulatory enforcement, and in particular as regards the sections on enhanced compliance and voluntary settlement?
- Q4.** Do you have any comments on the new chapter on publicity (chapter 7)?

### Respondents' views

- 3.6** Most respondents either had no comment on or were supportive of the minor amendments and points of clarification for the chapters on risk, licensing, compliance and criminal investigations within the *Licensing, compliance and enforcement statement* (Chapters 2 -6 of the statement). Some commented that these amendments did not represent a material change to the way the Commission operates.
- 3.7** One respondent commented on these chapters generally to state that whilst they accepted the operator's role as set out in the statement in various places, there were also actions to be taken by the Commission. In these respondents' views, these actions include promoting the social responsibility measures which work for customers and the industry, providing clear and unambiguous guidance for applicants during the application process, and the duty to prevent illegal gambling both to protect consumers and operators.
- 3.8** In relation to the significant amendments to chapter 5 about our enhanced compliance approach, the respondents generally supported the principle of voluntary settlements. Some expressed the view that these alternative approaches can save time and money and can result in a more positive resolution of inadvertent failings by an operator. However, some respondents expressed concern that the Commission's approach to voluntary settlements is like a 'gun to the head', with unfair pressure being applied to agree to a voluntary settlement.
- 3.9** A number of respondents expressed concerns relating to the addition of chapter 7 to the statement; and that public statements are about 'naming and shaming' and not sharing best practice. These respondents also suggested that the content of public statements should be agreed with the relevant companies before going public.
- 3.10** One respondent commented that whilst they agreed with the proposed addition of chapter 7 on publicity of regulatory action, the rhetoric would be meaningless if it was not put into action and if there were not meaningful sanctions in place to provide a real deterrent.
- 3.11** One respondent queried the extent to which an operator volunteering information about non-compliance would be taken into account in this enhanced approach to compliance.

## **The Commission's position**

### **The Commission's role in supporting social responsibility**

We agree with the respondent who commented that the Commission also has a role to support the industry's development of effective social responsibility measures. For more information about the Commission's approach in this area, please see [Strengthening social responsibility](#) which includes an explanation of the amendments to licence conditions and codes of practice which will come into force from 8 May 2015 and further information about other measures on which the Commission is working with stakeholders to develop improved protection for consumers.

### **The use of voluntary settlements and public statements**

Licence reviews can be time consuming and expensive for both the Commission and licensees, so one way to act more pragmatically is to agree a voluntary settlement, with public statements to share experiences, lessons learned and emerging good practice in the light of such cases.

Some of the concerns expressed by those unfamiliar with the process of public statements arose out of misunderstandings about the Commission's current practice before issuing statements. Whilst not able to commit to always doing so, the Commission does generally share public statements with the relevant operator(s) before issuing and on occasion has edited the statement if it has been considered reasonable to do so in the light of comments from the operator(s).

We do not therefore agree with the respondents who considered that the statements were not of value for sharing lessons learned. These public statements are a very useful tool to share best practice and - importantly - to demonstrate publicly what remedial action has been taken as a result of identified failings. They are designed to help other operators become or remain compliant, although occasionally further guidance may emerge to supplement the public statements or the industry may develop or amend industry codes to reflect lessons learned.

In response to the query on whether voluntary submission of information about non-compliance would be taken into account in deciding appropriate action. We will only enter in to voluntary settlements with operators who are very open with the Commission and have identified/implemented the action needed to remedy the situation. Therefore, voluntary settlements are likely to either not be an option or be subject to greater settlements in cases where information has not been voluntarily submitted in a timely manner.

The revised text of the statement, with the amendments highlighted, is set out at Appendix B of this document.

# Appendix A

## Amendments to the Statement of principles for licensing and regulation

The final [Statement of Principles for licensing and regulation March 2015](#) is available on our website. This Statement comes into effect immediately.

This appendix shows the text of the *Statement of Principles for licensing and regulation March 2015*, but highlights the amendments which have been made compared to the 2009 Statement.

For the purposes of this appendix only, significant additions to the text of this document (compared to the *Statement of Principles for licensing and regulation 2009*) are marked in **blue and bold**, and significant proposed deletions are marked in ~~strike through~~. Trivial amendments to correct errors such as punctuation, spelling or the use of acronyms are not marked. Similarly, changes in the order of paragraphs or paragraph numbering are not marked. Further changes which have been made following consultation are highlighted in **blue shading**.

## 1 Introduction

### The purpose of this statement of principles for licensing and regulation

- 1.1 This statement sets out the principles that the Gambling Commission (the Commission) will apply in exercising its functions under the Gambling Act 2005<sup>4</sup> (the Act), as amended by the Gambling (Licensing and Advertising) Act 2014. It also explains how these principles are expected to assist the Commission in its pursuit of the licensing objectives in the Act.
- 1.2 This statement does not apply to the exercise of the Commission's functions in relation to the National Lottery. Information about how the Commission regulates the National Lottery can be found at [www.gamblingcommission.gov.uk](http://www.gamblingcommission.gov.uk)

### The licensing objectives

- 1.3 The licensing objectives are set out in the Act<sup>5</sup> 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.

### The duty to pursue the licensing objectives and permit gambling

- 1.4 In exercising its functions under the Act the Commission is under a duty to pursue, and wherever appropriate to have regard to, the licensing objectives, and permit gambling, in so far as the Commission thinks it reasonably consistent with pursuit of the licensing objectives<sup>6</sup>.

### Statutory requirements and better regulation principles

- 1.5 This statement has been prepared in accordance with the requirements of sections: 23, 70, 73, 111, 112, 116 and 128 of the Act.
- 1.6 In drawing up this statement, the Commission has also had regard to the:
- Regulators' Compliance Code<sup>7</sup>
  - report of the Hampton Review<sup>8</sup>
  - report of the Macrory Review<sup>9</sup>
  - Enforcement Concordat<sup>10</sup>
  - Cabinet Office Code of Practice on Consultation Principles<sup>11</sup>
  - Scottish Improving Regulation Report 2008<sup>12</sup>
  - reports of the Regulatory Review Group in Scotland<sup>13</sup>
  - Hampton Implementation Review Report into the Gambling Commission<sup>14</sup>.

<sup>4</sup> The Commission also regulates the National Lottery, by virtue of the Public Bodies (Merger of the Gambling Commission and the National Lottery Commission) Order 2013, which abolished the National Lottery Commission and transferred the National Lottery Commission's functions to the Gambling Commission. The changes introduced by the Order came into force on 1 October 2013.

<sup>5</sup> Section 1 Gambling Act 2005

<sup>6</sup> Section 22 Gambling Act 2005

<sup>7</sup> Regulators' Compliance Code: Statutory Code of Practice for Regulators, Department for Business, Enterprise and Regulatory Reform, 17 December 2007 **The Regulators' Code (July 2013) which came into force in April 2014**

<sup>8</sup> Reducing Administrative Burdens: Effective Inspection and Enforcement, Philip Hampton, March 2005

<sup>9</sup> Regulatory Justice: Making Sanctions Effective, Professor Richard B. Macrory, November 2006

<sup>10</sup> Concordat on Good Enforcement, Cabinet Office, March 1998

<sup>11</sup> ~~Code of Practice on Consultation~~ **Principles**, Cabinet Office, ~~January 2004~~ **November 2013**

<sup>12</sup> The Scottish Improving Regulation Report 2008, July 2008

<sup>13</sup> Interim Report from the Regulatory Review Group for the Scottish Group, February 2008; Regulatory Review Group Annual Report, July 2008

<sup>14</sup> Gambling Commission: A Hampton Implementation Review Report, April 2009

## Appendix A: Amendments to the *Statement of Principles for licensing and regulation*

### Statutory requirements and better regulation principles

- 1.7 This statement will be reviewed by the Commission from time to time and revised when appropriate. Before revising the statement, the Commission will consult on its proposed changes in accordance with section 23(5) of the Act.

### The Commission's jurisdiction

- 1.8 The Commission's jurisdiction **under the Act** covers Great Britain – England, Scotland and Wales. **This includes the regulation of those supplying gambling from remote gambling equipment located in Britain as well as remote operators contracting with customers in Great Britain.** The Commission will maintain appropriate working relationships with each administration and will take account of the differences between them.

### The Commission's statutory functions under the Act

- 1.9 The Commission's functions in relation to licensing and regulation **under the Act** can broadly be categorised as those of licensing, compliance, **regulatory enforcement and criminal enforcement.**
- 1.10 In particular, the Commission has the power to:
- determine applications for operating and personal licences, specify the (general and individual) conditions to be contained in such licences, limit the duration of such licences<sup>15</sup>, and determine applications to vary or renew operating and personal licences
  - undertake activities for the purpose of assessing compliance with the Act and with any licence condition, code of practice or other provision made by or by virtue of the Act, and also for the purpose of assessing whether an offence is being **or has been** committed under or by virtue of the Act (including the power to request information from operating and personal licence holders under section 122 of the Act, to commence **licence** reviews under section 116 of the Act, and to carry out inspections under Part 15 of the Act)
  - take regulatory action against an operating or personal licence holder following a review under section 116 of the Act (including the power to issue a formal warning, to attach, remove or amend a licence condition, to suspend or revoke a licence, and to impose a financial penalty **for breach of a licence condition**), to void a bet and require repayment of any money paid in relation to it
  - to investigate and prosecute<sup>16</sup> offences committed under the Act.

### The framework of policies and procedures

- 1.11 This statement of principles for licensing and regulation underpins the work of the Commission.
- 1.12 The Commission has also developed a number of policies which build on the principles in this document and govern how the Commission will carry out its work, including:
- Licensing, compliance and enforcement policy statement
  - Statement of principles for determining financial penalties
  - Licence Conditions and Codes of Practice
  - Complaints procedure
  - Corporate governance framework
  - Regulatory panel procedures **and guidance.**

<sup>15</sup> The Commission has not made any determinations regarding the duration of an operating or personal licence, or a specified class of operating or personal licence, under section 111 of the Act. Nor, as a result, has it made any determinations regarding the duration of a renewed operating or personal licence, or a specified class of operating or personal licence, under section 112 of the Act. If any such determinations are made in due course, they will be published as part of a revised version of this statement in accordance with the requirements of sections 111(4) and 112(7) of the Act respectively.

<sup>16</sup> The Commission has no power to prosecute offences in Scotland. That power rests solely with the Crown Office and Procurator Fiscal Service, to whom the Commission can refer the results of an investigation.

## Appendix A: Amendments to the *Statement of Principles for licensing and regulation*

### **What the Commission expects from applicants for licences** (See Section 3 for the new text which replaces this paragraph.)

The Commission expects applicants for licences to:

- be able to demonstrate that they can meet the Commission's suitability assessment
- ensure that the activities they plan to carry out will be conducted in a manner which minimises the risks to the licensing objectives
- disclose to the Commission anything which the Commission would reasonably expect to know.

## 2 General principles

### Introduction

- 2.1 The Commission will apply the following **general** principles in exercising its functions under the Act. These principles have been formulated with a view to ensuring that the Commission regulates gambling **in line with Hampton principles of Better Regulation**, in a transparent, accountable, proportionate, consistent and targeted manner.

### Regulating gambling in the public interest

- 2.2 The Commission regulates gambling in the public interest, having regard to, and in pursuit of, the licensing objectives in the Act. In doing so the Commission will work with licensees and other stakeholders and will ensure that it takes into account:
- the need to protect the public
  - the need to maintain public confidence in the gambling industry and the Commission
  - the importance of declaring and upholding proper standards of conduct and competence by licence holders.

### Keeping the Commission's regulatory approach under review

- 2.3 The Commission will keep its regulatory approach under review, and will make changes to that approach when appropriate (for example, to reflect experience or new developments).

### Consultation

- 2.4 The Commission will consult on changes to its regulatory approach where it is appropriate to do so, having regard to the ~~Cabinet Office Code of Practice on Consultation~~ **Principles**<sup>17</sup> and will ensure that:
- consultation takes place when proposals are still at a formative stage
  - sufficient information is provided to allow consultees to respond meaningfully
  - adequate time is allowed for responses
  - all responses are taken into account in reaching a final decision.
- 2.5 The Commission will adopt a precautionary approach **when approaching new developments** and interpreting evidence, where this is appropriate, having regard to its duty to promote the licensing objectives in the Act.

### The Commission's decision making processes

- 2.6 The Commission will ensure that licensing and regulatory decisions are properly reasoned and evidence-based<sup>18</sup> and taken at the most appropriate level. The Commission will adopt a presumption in favour of decisions being made at the lowest appropriate level within the Commission<sup>19</sup>, so that decisions of similar complexity and impact are generally made at similar levels within the Commission.

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<sup>17</sup> ~~Code of Practice on Consultation~~ **Principles**, Cabinet Office, ~~January 2004~~ **November 2013**

<sup>18</sup> The kind of evidence to which the Commission will have regard when assessing the integrity, competence and financial or other circumstances of a licence applicant and in considering the suitability of a gaming machine or of other equipment is specified in the *Licensing, Compliance and Enforcement Policy Statement*. The relevant aspects of that document are incorporated into this statement by reference, in accordance with the requirements of sections 70(5) and 70(6) of the Act respectively.

<sup>19</sup> The Commission's practice regarding the delegation of functions in relation to licence applications is specified in its Corporate Governance Policy (as amended from time to time). Those parts of ~~Appendix 8~~ which deal with the grant or refusal of licence applications are incorporated into this statement by reference, in accordance with the requirements of section 73(4) of the Act.

## Appendix A: Amendments to the *Statement of Principles for licensing and regulation*

### Imposing the minimum burden necessary to promote the licensing objectives

- 2.7** The Commission will ensure that its regulatory approach imposes the minimum burden necessary to promote the licensing objectives in the Act – having regard to its impact on different types and sizes of licence applicant and licence holder – and does not unduly hinder economic progress.

### Requests for information

- 2.8** The Commission will request only that information which it requires<sup>20</sup> and will avoid duplicating requests by seeking to obtain information from government bodies (for example, the ~~Serious Fraud Office~~ **National Crime Agency**) and other regulators (for example, the ~~National Lottery Commission, the Office of Fair Trading, the Office of Communications, the Financial Services~~ **Conduct Authority and other gambling regulators**) where it is possible, and appropriate, to do so.

### Adopting a risk-based approach

- 2.9** The Commission will adopt a risk-based approach to regulation to ensure that its resources are concentrated where they are needed most and can be most effective.

### Proportionality

- 2.10** The Commission will generally use the least intrusive regulatory tool to achieve compliance and will ensure that any regulatory action is proportionate to the importance of the matters to which it relates, having regard to its risk assessment.

### Promoting economic growth

- 2.11** **In deciding what action to take, and whether action should be taken at all, the Commission will have regard to the desirability of promoting economic growth and its duty to permit gambling in so far as the Commission thinks it reasonably consistent with pursuit of the licensing objectives.**
- 2.12** **The Commission will seek to provide a fair regulatory framework within which existing operators and new entrants can compete and grow with the minimum of regulatory burden compatible with public protection and the licensing objectives.**

### Focusing on preventative activity

- 2.13** The Commission will focus on preventative activity by keeping the gambling industry fully informed of the requirements of the regulatory regime and providing general information, advice and guidance, both on request and on its own initiative, with a view to aiding regulatory compliance. **Where possible, the Commission will also work with licensed operators to prepare public statements about issues which may offer lessons to operators or the public.**

### Coordinating regulatory action

- 2.14** **The Commission will take coordinated regulatory action with government bodies and/or other regulators where it is appropriate to do so.**

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<sup>20</sup> The Commission's practice in relation to evidence required or accepted in connection with licence applications is specified in *the Licensing, Compliance and Enforcement Policy Statement*. The relevant aspects of that document are incorporated into this statement by reference, in accordance with the requirements of section 73(4) of the Act.



## Appendix A: Amendments to the *Statement of Principles for licensing and regulation*

### Sharing information

- 2.15** The Commission will share information with other bodies where it is legally required to do so and also where it considers it necessary to, and is legally permitted to, do so. This may include sharing data with relevant public authorities, overseas regulators and law enforcement agencies in order to help the Commission perform its regulatory functions, such as assessing individuals' suitability to be licensed, the prevention and detection of crime or for the purpose of assisting another body to exercise its functions.

### Enforcement of gambling contracts

- 2.16** The Commission expects parties to gambling contracts to ~~take private law action in respect of any breach~~ take action themselves if they consider that the other party has breached the contract. The Commission will not, except in exceptional circumstances, undertake reviews where debt enforcement proceedings could be brought by the parties to a gambling contract. **The outcome of such proceedings may be taken into account by the Commission if it gives rise to questions about a licensee's suitability to hold a licence.**

### Complaints

- 2.17** The Commission will treat complaints about its work seriously and will address them in accordance with its published procedures<sup>21</sup>.

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<sup>21</sup> See in particular Appendix 13 of the Gambling Commission Corporate Governance Framework (November 2013)

### 3 Principles for licensing

#### Introduction

- 3.1 The Commission will apply the following principles in exercising its licensing functions under the Act.

#### ~~Licence reviews and criminal~~ applications

- 3.2 The Commission expects applicants for licences to provide the Commission with all the information it needs in order to determine whether or not they are suitable to hold a licence.
- 3.3 The Commission expects that licence applications will be complete and accurate at the point they are submitted to the Commission. It follows that, whilst applicants may be permitted to make minor changes to their proposals, the Commission will not permit applicants to make material changes to their application during the process. Material changes to an application are likely to result in an applicant being invited to withdraw their application and submit a new application, accompanied by the appropriate fee, or it may result in an application being refused.
- 3.4 The Commission will seek to determine licence applications within a reasonable period of time.
- 3.5 Whilst the Commission will provide assistance to licence applicants, to help them through the application process, the responsibility for providing information rests with applicants. The Commission will treat repeated delays in providing information as a strong contra-indicator of suitability to hold a licence.

#### Openness and cooperation

- 3.6 The Commission expects applicants to work with the Commission in an open and cooperative way and to disclose anything which the Commission would reasonably expect to know. The Commission will attach significant weight to an applicant's failure to work in an open and cooperative way.
- 3.7 Withholding information from the Commission will also be treated as a strong contra-indicator of an applicant's suitability to hold a licence and the Commission will not grant licences to an operator if there is doubt about their ability to provide the information the Commission needs in order to exercise its functions<sup>22</sup>.

#### Providing facilities for gambling in reliance on an operating licence

- 3.8 The Commission will not normally licence an operator unless the operator has a clear business plan which explains the operator's plans for transacting with consumers in Great Britain or another EEA state. For example, locating remote gambling equipment in Great Britain to trigger the requirement for a licence solely in order to facilitate advertising of remote gambling to customers in other parts of the world would not be considered a sufficient reason for the Commission to grant an application. Operators will need to satisfy the Commission that they have a genuine need to hold an operating licence.

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<sup>22</sup> For example, if the data protection legislation in the jurisdiction from which a remote operator proposed to operate, or the regulator in that jurisdiction, prevented the operator from sharing information with the Commission, that would be a strong contra-indicator of the operator's suitability to hold a licence.

## Appendix A: Amendments to the *Statement of Principles for licensing and regulation*

- 3.9** The Commission will not issue licences to people who do not need them. If an operating licence is issued but an operator does not provide facilities for gambling in reliance on that licence within a reasonable period, the Commission may commence a licence review with a view to revoking the licence if that appears necessary.
- 3.10** The Commission may grant licences (particularly remote gambling licences) subject to a condition that requires an operator to begin to offer facilities for gambling within a specified timescale.

### Failure to declare convictions

- 3.11** The Commission will attach significant weight to failure by a licence applicant to declare a conviction for a relevant offence<sup>23</sup> or unspent conviction for any other offence committed by it or a person relevant to the application, in the absence of a reasonable excuse for such failure.

### The relevance of criminal convictions

- 3.12** The Commission will determine the weight it will attach to convictions for relevant offences and unspent convictions for other offences committed by licence applicants or persons relevant to applications for operating or personal licences<sup>24</sup> having regard to the nature and seriousness of the offence and the time which has elapsed since the offence was committed.

### Protecting the licensing objectives

- 3.13** The Commission expects licence applicants to be able to explain how the activities they plan to carry out will be conducted in a manner which minimises the risks to the licensing objectives.

### The responsibility for protecting the licensing objectives

- 3.14** The Commission will hold an operator's most senior operational staff and directors accountable for regulatory compliance and the protection of the licensing objectives. For that reason the Commission expects licence applicants to make it clear who will fulfil those roles<sup>25</sup> if the licence application is granted.

### Separation of operational and compliance responsibilities

- 3.15** Where an operator is required to have Personal Management Licence holders in specified management offices, the Commission would normally expect that the person who occupies the Head of Compliance role will not also occupy one of the other specified management offices.

### The opportunity to make oral representations

- 3.16** The Commission will provide an opportunity for licence applicants to make oral representations in appropriate circumstances<sup>26</sup>.

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<sup>23</sup> A relevant offence is one listed in schedule 7 to the Act, or certain equivalent foreign offences: see section 126(2)

<sup>24</sup> Under section 70(9)(b) of the Act, a person is relevant to a licence application if, in particular, he is likely to exercise a function in connection with, or to have an interest in, the licensed activities.

<sup>25</sup> The roles referred to in paragraph 3.14 include the specified management offices listed in current licence condition 1.2.1.

<sup>26</sup> The Commission's practice in relation to the holding of oral hearings of licence applications is specified in *the Licensing, Compliance and Enforcement Policy Statement*. The relevant aspects of that document are incorporated into this statement by reference, in accordance with the requirements of section 73(4) of the Act.

## **Appendix A: Amendments to the *Statement of Principles for licensing and regulation***

### **The suitability of local authorities to run lotteries**

- 3.17** The Commission will assume integrity when assessing the suitability of any local authority to run a lottery<sup>27</sup>.

### **Confirming licensing decisions**

- 3.18** The Commission will provide applicants and licensees with written notification of licensing and regulatory enforcement decisions, including:
- a clear explanation of the reasons on which the decision is based (in a level of detail proportionate to its impact)
  - details of any appeal mechanism(s).

### **Publicising licensing decisions**

- 3.19** The Commission will publish a register of licensed operators, along with regular statistical updates on its licensing work.
- 3.20** The Commission may also publish details of licence applications that were refused, or withdrawn before they were determined, where it considers it in the public interest to do so. Such information will normally be published 14 days after a decision has been taken, whether or not the decision is the subject of an appeal.

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<sup>27</sup> This assumption is specified in accordance with section 70(7) of the Act. The Commission has not identified a class of gaming machine or other equipment in relation to which it will or may assume suitability under section 70(8) of the Act, and therefore makes no specification in that regard.

## 4 Principles for regulation

### Introduction

- 4.1 The Commission expects licensees to conduct their gambling operations in a way that does not put the licensing objectives at risk. The Licence Conditions and Codes of Practice are designed to ensure this. **The Commission will apply the following principles in exercising its regulatory functions under the Act.**

### Operating licence holders

- 4.2 The Commission expects ~~those holding licences, including as appropriate, personal licences operators~~ to:
- conduct their business with integrity
  - act with due care, skill and diligence
  - take care to organise and control their affairs responsibly and effectively and have adequate systems and controls to minimise the risks to the licensing objectives
  - maintain adequate financial resources
  - have due regard to the interests of customers and treat them fairly
  - have due regard to the information needs of customers and communicate with them in a way that is clear, not misleading, and allows them to make a properly informed judgment about whether to gamble
  - manage conflicts of interest fairly
  - work with the Commission in an open and co-operative way
  - disclose to the Commission anything which the Commission would reasonably expect to know.

### Senior positions and Personal Management Licence holders

- 4.3 **The Commission expects those occupying senior positions, whether or not they hold Personal Management Licences, to:**
- **uphold the licensing objectives and ensure compliance of operators with the LCCP**
  - **organise and control their affairs responsibly and effectively**
  - **have adequate systems and controls to keep gambling fair and safe**
  - **conduct their business with integrity**
  - **act with due care, skill and diligence**
  - **maintain adequate financial resources**
  - **have due regard to the interest of customers and treat them fairly**
  - **have due regard to the information needs of customers and communicate with them in a way that is clear, not misleading, and allows them to make an informed judgment about whether to gamble**
  - **manage conflicts of interest fairly**
  - **disclose to the Commission anything which the Commission would reasonably expect to know**
  - **work with the Commission in an open and cooperative way.**

### Personal Functional Licence holders

- 4.4 **The Commission expects those holding Personal Functional Licences to:**
- **conduct themselves with integrity**
  - **act with due care, skill and diligence**
  - **have due regard to the interests of customers and treat them fairly**
  - **work with the Commission in an open and co-operative way**
  - **disclose to the Commission anything which the Commission would reasonably expect to know**
  - **keep their skills and knowledge up to date.**

## Appendix A: Amendments to the *Statement of Principles for licensing and regulation*

### Dealing with issues that put the licensing objectives at risk and voluntary settlement

- 4.5 Where concerns have been raised about a licensee, the Commission may commence an investigation but it will not necessarily commence a licence review unless and until it appears likely that the Commission will need to exercise its formal powers under section 117 of the Act.
- 4.6 As licence reviews can be time consuming and expensive for both the Commission and licensees, the Commission will seek, where appropriate, to fulfil its statutory obligations and pursue the licensing objectives through means that stop short of formal licence reviews under section 116 of the Act. One means for achieving this will be by way of voluntary settlement, which the Commission will consider where a licensee is:
- open and transparent in its dealings with the Commission
  - able to demonstrate that they have insight into apparent failings
  - able to suggest actions that would prevent the need for formal action by the Commission
  - prepared, where appropriate, to publish a statement which would acknowledge failings as well as deterring future non-compliance by others and / or share learning that may be beneficial to the wider industry or other stakeholders including the public
  - prepared to divest itself of any gross gambling yield or cost savings which accrued as a result of the failings
  - prepared to contribute to the direct costs to the Commission of investigating the matter in respect of which voluntary settlement is sought
  - prepared to volunteer a payment in lieu of the financial penalty the Commission might otherwise impose for breach of a licence condition in accordance with the *Statement of Principles for Determining Financial Penalties*.
- 4.7 Where a licensee is unable or unwilling to meet the requirements above, the Commission may commence a licence review with a view to exercising its formal regulatory powers, where that seems appropriate.
- 4.8 Where a review has started but a licensee makes a full disclosure of all the relevant facts, the Commission will consider whether its investigations need to continue, or whether it is prepared to agree the facts and the nature of the sanction (if any) which ought to be imposed, or in appropriate cases what action short of formal sanction should be taken.
- 4.9 The earlier disclosure is made in the investigation process, the more credit will be given to the licensee for making such a disclosure.
- 4.10 The Commission will set clear and challenging timetables for settlement discussions to ensure that they result in a prompt outcome.

### Licence reviews and criminal convictions

- 4.11 The Commission will commence a review under section 116 of the Act where a relevant offence is committed by an operating or personal licence holder or a person relevant to any such licence, except in exceptional circumstances.

### ~~Focus on investigating offences in which gambling is an intrinsic element~~ Criminal investigations

- 4.12 The Commission will focus on investigating offences under the Act, such as crimes in which gambling is an intrinsic element (for example, illegal gambling) and crimes which affect the outcome of gambling (for example, cheating **where that affects other players**), together –

## Appendix A: Amendments to the *Statement of Principles for licensing and regulation*

in conjunction with government **other** bodies and/or other regulators as necessary – with any other offences related to gambling (for example, money laundering offences under the Proceeds of Crime Act 2002 and illegal money lending).

- 4.13 **In order to target resources where we can be most effective,** investigating crimes against operators will normally be a low priority for the Commission, unless the alleged offence also affected players. In rare instances the Commission may investigate crimes against operators, but ordinarily such allegations will be matters for the police.

### **Considering the outcome of investigations into offences not related to gambling**

- 4.14 The Commission will not itself investigate offences which are not related to gambling, but will have regard to the outcome of investigations carried out by other bodies (for example, burglary of premises licensed under the Act or theft by staff) where they raise issues regarding the continuing suitability of licence holders. **The Commission may also pass information about such offences to the police or another relevant prosecuting authority.**

### **Considering the outcome of investigations carried out by other regulators/ government agencies**

- 4.15 **The Commission expects operators to comply with the law, both in the UK and in other jurisdictions in which they, or related companies, operate. Failure to meet this expectation may raise questions about the continuing suitability of licence holders.**

### **Coordinating regulatory action**

~~The Commission will take coordinated regulatory action with government bodies and/or other regulators where it is appropriate to do so.~~

### **Publication of information relating to the Commission's regulatory functions**

- 4.16 **The Commission will publish regular statistical updates on its regulatory work.**
- 4.17 **The Commission will not normally publish details of the information found or the conclusions reached during its investigations. An exception may be made where there is speculation in the public domain and/or where those involved have made public statements which need to be responded to in order to avoid misconceptions arising.**
- 4.18 **The Commission will normally publish details of all formal regulatory action taken under section 117 of the Act. Such information will normally be published 14 days after a decision has been taken, whether or not the decision is the subject of an appeal.**
- 4.19 **When investigating criminal matters, the Commission will generally consider making a public announcement when suspects are arrested, when search warrants are executed and when charges are laid. A public announcement may also be made at other stages of the investigation when this is considered appropriate and will normally be made at the conclusion of any trial.**
- 4.20 **The Commission will, upon request, review any compliance or enforcement-related notices that are published on the Commission's website in order to determine whether continued publication is appropriate, or whether publicity should be removed or amended.**

## 5 Promoting the licensing objectives

### Introduction

5.1 The Commission expects the principles set out above to assist the pursuit of the statutory licensing objectives in the following ways.

### **Preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime**

- 5.2 The Commission's licensing, compliance and enforcement processes are designed to prevent gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime, and will ensure that:
- only suitable applicants will be granted operating licences or personal licences
  - the suitability of licence holders will be assessed on an ongoing basis as part of the Commission's compliance activities
  - compliance activity is targeted where the risks to the licensing objectives are greatest
  - the suitability of licence holders will be reconsidered in the light of any subsequent criminal activity or connection with such activity.
- 5.3 The Commission will take a serious view of applicants and licensees who have convictions for relevant offences<sup>28</sup>. Each case will be considered on its merits, but there will be a presumption in favour of refusing an application or reviewing a licence in such cases.
- 5.4 The Commission will examine the corporate control structures and ownership of operators to enable the Commission to identify and satisfy itself of the integrity of controllers of companies<sup>29</sup> and others relevant to the operation of gambling.
- 5.5 The Commission will provide advice of a general nature about compliance to licensed operators and potential operators.
- 5.6 The Commission will provide guidance to local licensing authorities and to British Police Forces.
- 5.7 The Commission will make available general advice to the public on what activities are permissible without a licence.
- 5.8 The Commission will employ staff with the necessary skills and knowledge and will delegate to them the necessary powers they need to carry out **licensing**, compliance and enforcement functions.
- 5.9 In relation to the prevention, investigation and prosecution<sup>30</sup> of offences under the Act, and other offences related to gambling, the Commission will give priority, based on the level of risk posed to the licensing objectives, to:
- crimes in which gambling is an intrinsic element, for example illegal gambling
  - financial crimes which operators should seek to prevent, such as money laundering offences under the Proceeds of Crime Act
  - crimes which affect the outcome of gambling for other participants.
- 5.10 Although the Commission will focus on crimes within the Act, rather than those unrelated to the Act such as burglary of gambling-licensed premises or theft by employees, the Commission may have an interest in the outcome of such investigations if they raise issues of relevance to the continuing suitability of persons licensed by the Commission. In appropriate cases the Commission may separately commence a review of the licence.

<sup>28</sup> As defined in schedule 7, Gambling Act 2005

<sup>29</sup> Within the meaning of section 422 of the Financial Services and Markets Act 2000

<sup>30</sup> In Scotland the power to prosecute offences rests with the Crown Office and Procurator Fiscal Service, to whom the Commission can refer the results of an investigation.



## Appendix A: Amendments to the *Statement of Principles for licensing and regulation*

- 5.11** The Commission will seek to build and maintain good liaison and working relationships with local authorities, other regulators and law enforcement bodies. The Commission will work closely with licensing authorities, other law enforcement agencies and other regulators to share relevant information and, where appropriate, investigate offences.
- 5.12** While the Commission recognises that licensing authorities will have the principal role in ensuring that premises based gambling is not a source of disorder, the Commission will also have a key role in this and will advise licensing authorities on the responsibilities that they have in relation to premises licensing. Where the Commission becomes aware that there are problems arising from disorder at gambling premises, the Commission may decide to commence a review of the licence.

### **Ensuring that gambling is conducted in a fair and open way**

- 5.13** The Commission expects that not only is gambling fair in the way it is played, but that the rules are transparent to players and they know what to expect.
- 5.14** The Commission will ensure that the rules are fair and that easily understandable information is made available by operators to players about, for example: the rules of the game, the probability of losing or winning, and the terms and conditions on which business is conducted.
- 5.15** The Commission will ensure that operating and personal licences are issued only to those who are suitable to offer gambling facilities or work in the industry.
- 5.16** The Commission will ensure that appropriate advertising codes continue to be in place to prevent consumers from being misled.
- 5.17** The Commission will require operators to make public the results of events and competitions on which commercial gambling takes place.
- 5.18** The Commission will ensure that the licences it issues, together with the licence conditions it imposes and the codes of practice it publishes, set appropriate standards of conduct for licence holders (for example, in respect of the terms on which gambling is offered and the transparency of such terms) and appropriate technical standards for gaming machines and other equipment used in connection with any licensed activity.
- 5.19** In the event of non-compliance, the Commission will ensure that sanctions are imposed, **or other appropriate steps taken**, which, among other things, deter future non-compliance on the part of the relevant licence holder and other licence holders more generally.
- 5.20** The Commission will ensure that the investigation and prosecution<sup>31</sup> of offences under the Act – including the offence of cheating under section 42 of the Act – ~~is given priority based on~~ **are prioritised by reference to** the level of risk posed to the licensing objectives.

### **Protecting children and other vulnerable persons from being harmed or exploited by gambling**

- 5.21** The Commission has issued and will from time to time revise its guidance to licensing authorities about how they can ensure that gambling premises are presented in such a way that access by children can be prevented.
- 5.22** The Commission has issued and will from time to time revise a code about access to casino premises in accordance with section 176, and will require persons operating casinos to take measures, such as supervision of entrances and training of staff, to prevent access by children and young persons.

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<sup>31</sup> In Scotland the power to prosecute rests solely with the Crown Office and Procurator Fiscal Service, to whom the Commission can refer the results of an investigation.

## Appendix A: Amendments to the *Statement of Principles for licensing and regulation*

- 5.23** The Commission will require persons operating remote gambling to ensure that there are adequate age verification measures in place to prevent children and young persons gambling on their sites.
- 5.24** The Commission will work with the Committees of Advertising Practice to develop advertising codes on gambling and will ensure that these are backed by effective enforcement action if those codes are breached.
- 5.25** With regard to ‘vulnerable persons’, **whilst the following list is not exhaustive**, the Commission considers that this group will include:
- people who ~~gamble~~ **spend more money and / or time gambling** than they want to
  - people who gamble beyond their means
  - people who may not be able to make informed or balanced decisions about gambling, for example because of ~~mental~~ health problems, learning disability, or substance misuse relating to alcohol or drugs.
- 5.26** Although the Commission’s role does not, for example, extend to treatment or care of those who have gambling problems, the Commission does have an interest in keeping up to date with developments and trends in work of that kind.
- 5.27** The Commission will issue codes that include social responsibility requirements, setting out ~~what practical measures~~ **minimum requirements and outcomes for operators and ordinary code provisions which set out good practice. Operators may adopt alternative approaches to those set out in ordinary code provisions if they have actively taken account of the provisions and can demonstrate that an alternative approach is reasonable in the operator’s particular circumstances; or that to take an alternative approach would be acting in a similarly effective manner.** ~~must take in relation to social responsibility.~~
- 5.28** The Commission will ensure that marketing practices (including advertising and inducements) do not exaggerate the chances of winning or encourage players to gamble more than they can afford or want to.
- 5.29** The Commission will work with other bodies to build and maintain knowledge about problem gambling and the measures that may be taken to reduce the prevalence of problem gambling and will ~~undertake~~ **secure regular prevalence surveys data on gambling participation and problematic gambling behaviour.**
- 5.30** The Commission will normally rely on external research but may find it helpful to carry out, or commission, applied research on the effectiveness of particular measures – both before they are implemented and to monitor how effective they are in practice. In interpreting the available evidence, the Commission will take a precautionary approach<sup>32</sup>. For example, caution may be justified where evidence is mixed or inconclusive, and the Commission would not want to restrict its discretion by requiring conclusive evidence that something was unsafe before taking measures to restrict it.
- 5.31** The Commission’s focus will be on identifying best practice in protecting vulnerable people from being harmed or exploited by gambling, and, where appropriate, placing requirements on operators to put particular measures in place and to monitor their compliance. Compliance will be kept regularly under review, with activity by the Commission targeted where the risks to the licensing objectives are greatest.
- 5.32** In the event of non-compliance, sanctions may be imposed which, among other things, are intended to deter future non-compliance on the part of the relevant licence holder and other licence holders more generally.

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<sup>32</sup> <http://www.hse.gov.uk/aboutus/meetings/committees/ilgra/pppa.htm>

## **Appendix A: Amendments to the *Statement of Principles for licensing and regulation***

**5.33** The Commission will also give priority to the investigation and prosecution<sup>33</sup> of offences under the Act – including those offences relating to children under sections 46, 47 and 51 to 57 of the Act – where appropriate, based on the level of risk posed to the licensing objectives.

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<sup>33</sup> In Scotland the power to prosecute offences rests solely with the Crown Office and Procurator Fiscal Service, to whom the Commission can refer the results of an investigation.

# Appendix B

## Amendments to the Licensing, compliance and enforcement under the Gambling Act 2005: policy statement

The final [Licensing, compliance and enforcement statement March 2014](#) is available on our website. This Statement comes into effect immediately.

This appendix shows the text of the *Licensing compliance and enforcement statement March 2015*, but highlights the amendments which have been made compared to the 2009 Statement.

For the purposes of this appendix only, significant additions to the text of this document (compared to the *Statement of Principles for licensing and regulation 2009*) are marked in **blue and bold**, and significant proposed deletions are marked in ~~strikothrough~~. Trivial amendments to correct errors such as punctuation, spelling or the use of acronyms are not marked. Similarly, changes in the order of paragraphs or paragraph numbering are not marked. Further changes which have been made following consultation are highlighted in **blue shading**.

## Appendix B Contents

<b>1</b>	<b>Introduction</b>	<b>30</b>
<b>2</b>	<b>Assessing risk</b>	<b>32</b>
<b>3</b>	<b>Licensing</b>	<b>35</b>
<b>4</b>	<b>Compliance</b>	<b>42</b>
<del><b>5</b></del>	<del><b>Regulatory enforcement</b></del>	
<b>5</b>	<b>Dealing with non-compliance (new)</b>	<b>46</b>
<b>6</b>	<b>Investigation and prosecution of offences under the Gambling Act 2005</b>	<b>55</b>
<b>7</b>	<b>Publicity (new)</b>	<b>58</b>

# 1 Introduction

## The role of the Commission

- 1.1 The Gambling Commission (the Commission) regulates commercial gambling in Great Britain. The Commission's functions are set out in the Gambling Act 2005<sup>34</sup> (the Act), **as amended by the Gambling (Licensing and Advertising) Act 2014**. The principal ways in which the Commission carries out its functions are by:
- licensing operators and key personnel
  - setting appropriate licence conditions and codes of practice
  - carrying out compliance activities
  - enforcement and prosecution work
  - providing advice.
- 1.2 **The Commission also regulates the National Lottery. The legislative regime governing the National Lottery is principally set out in National Lottery etc. Act 1993 (as amended). This policy statement does not cover regulation of the National Lottery. Details of how the Commission regulates the National Lottery can be found at: <http://www.natlotcomm.gov.uk>**

## The licensing objectives

- 1.3 The Gambling Act 2005 (the Act) sets out the licensing objectives, which 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 people from being harmed or exploited by gambling.
- 1.4 In carrying out its functions, the Commission is under a statutory duty to pursue and have regard to the licensing objectives. The Commission must also permit gambling, in so far as it thinks it reasonably consistent with pursuit of the licensing objectives.

## Statement of principles for licensing and regulation

- 1.5 The Commission is required to prepare, publish, and keep under review, a statement that sets out the principles which will govern the exercise of its functions, and, in particular, explains how those principles will assist the Commission in its pursuit of the licensing objectives. The statement of principles for licensing and regulation underpins all of the work of the Commission and can be found on the Commission's website at: [www.gamblingcommission.gov.uk](http://www.gamblingcommission.gov.uk)

## Purpose of this document

- 1.6 This document should be read in conjunction with *Statement of principles for licensing and regulation*, which it builds on by setting out the Commission's regulatory policies in relation to:
- assessing risk
  - licensing operators and key personnel
  - carrying out compliance activities
  - enforcement.

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<sup>34</sup> **The Commission also regulates the National Lottery, by virtue of the Public Bodies (Merger of the Gambling Commission and the National Lottery Commission) Order 2013, which abolished the National Lottery Commission and transferred the National Lottery Commission's functions to the Gambling Commission. The changes introduced by the Order came into force on 1 October 2013.**

## **Appendix B: Amendments to the *Licensing, compliance and enforcement statement***

### **Other policy documents**

**1.7** The Commission has also developed a number of further documents which build on the statement of principles for licensing and regulation and govern how it carries out its functions:

- Statement of principles for determining financial penalties
- Corporate governance framework
- Regulatory panel procedures.

These documents are available online at [www.gamblingcommission.gov.uk](http://www.gamblingcommission.gov.uk)

## 2 Assessing risk

- 2.1** The Commission's approach to risk underpins its licensing, compliance and enforcement functions. This chapter sets out the key elements of the Commission's risk methodology, including the processes for addressing and reviewing risk.
- 2.2** The Commission's risk methodology is applied in order to establish a regulatory risk **assessment** for licence holders. This informs the level and nature of regulatory engagement by the Commission with those operators.
- 2.3** The methodology is based upon assessing the likelihood of risk presented by operators and the potential impact that the risk if realised will have upon the licensing objectives. The assessment of likelihood will relate to key regulatory risk groups within the operators control, whilst the assessment of impact will be related to the size and market scope of an operator's activity.

### Regulatory risk groups

- 2.4** The Commission has identified key regulatory risk groups - those related to the suitability of the licence holder, those which relate to the gambling facilities themselves, and finally those which relate to the manner in which the gambling facilities are provided. Each risk group will contain information elements to which an assessment will address itself.
- 2.5** The risks related to suitability of the licence holder include:
- staff and management integrity and competence
  - controller<sup>35</sup> integrity
  - business integrity:
    - financial circumstances
    - governance, structure and resource.
- 2.6** The risks related to the type of gambling facility offered include:
- gambling product or facility
  - market scope.
- 2.7** The risks presented through the provision of gambling facilities include:
- location and operating environment
  - consistency with the licensing objectives.

### Identifying risk

- 2.8** With any aspect of regulatory engagement (licensing, compliance and so on), an initial identification of the risk(s) presented will be made. For example, with a licence application the consideration will necessarily involve a wide range of risks. A compliance visit may involve a similar broad assessment or may relate to specific potential risks identified as a result of information received or previous operator engagement. The assessment of risk may focus upon any combination of the regulatory risk groups and the elements there within.
- 2.9** An example of risk related to employees or management integrity would be the risk posed by a personal management licence holder being convicted of a relevant criminal offence indicating dishonesty. An example of risk related to the provision of gambling facilities would be the manner in which a licensed operator might seek to comply with the requirements of the Act and the Commission's Licence Conditions and Codes of Practice (LCCP).

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<sup>35</sup> Within the meaning of section 422 of the Financial Services and Markets Act 2000



## Appendix B: Amendments to the *Licensing, compliance and enforcement statement*

### Assessing risk

- 2.10** Having identified relevant risks, the next consideration is the likelihood of a risk or risks occurring (provided it has not already occurred) and the likely impact.
- 2.11** The Commission's focus will determine the risk categories and elements against which information will be sought. The elements assessed in respect of likelihood may include how compliant an operator is, or is likely to be, with the requirements of the Act, the LCCP and also organisational considerations such as accountability and governance, competence and integrity of staff, and effectiveness of policies and procedures in minimising risk to the licensing objectives.
- 2.12** A significant part of this relates to the assessment of suitability. The assessment of suitability is a key element of the Commission's licensing process and continues, after a licence has been granted, in the Commission's compliance processes<sup>36</sup>.
- 2.13** The Commission will assess the likely impact of a risk based primarily on the size and market scope of an operator (actual or potential) **and their previous regulatory history**. This may include size of customer base, number of premises, turnover or gaming yield and extent of licensed activity. This latter consideration covers not only those operators which offer gambling across more than one sector but also those where the nature of a single licensed activity extends across multiple sectors. Gambling software development and gaming machine manufacture are examples of this where the potential market impact is high if the end product presents risk to the licensing objectives once it is made available.

### Addressing the risk

- 2.14** The impact and likelihood of a given risk (or risks) is then taken into account as part of an overall risk assessment ~~rating~~. This will determine the degree and type of regulatory engagement that may be required, although impact will be the primary consideration in this determination. The Commission considers that some operators will always be higher impact because of the size and scale, or nature of their operations. Those who have extensive operations (in terms of impact) or a significant market share will always receive a greater degree of regulatory oversight due to the market impact (actual or potential) should regulatory risk materialise or be identified. This is why additional information may be required at the licensing application stage and also why the Commission has adopted a relationship management approach (through ~~the National Compliance Managers~~ **identified staff**) for certain licensed **high impact** operators.
- 2.15** Once an assessment has been completed, the Commission will, as appropriate, share with the operator its considerations as to the level of risk considered to exist. This will provide the basis of the Commission's further engagement and operators should use the information to inform their risk controls. The Commission will, as appropriate, provide information about its assessments to operators. Assessments will not be shared with other operators or parties, **although they may be shared with other regulators where appropriate. Operators that are the subjects of assessments are free to share such information as they see fit.**
- 2.16** The approach will allow a focused approach to managing risk to the licensing objectives, and the Commission would expect this to facilitate a productive engagement and assist operators in developing effective risk management strategies. By building up a picture over time, the Commission would expect to be able to identify risk movements within individual operators and identify major issues within sectors or impact groups.

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<sup>36</sup> Further details of the Commission's current risk modelling and compliance visit programme can be found in the document *The Compliance process; the Risk Modelling System (RMS) and Annual Visit Programme (AVP)*.

## **Appendix B: Amendments to the *Licensing, compliance and enforcement statement***

**2.17** Those operators which demonstrate good governance and a high level of compliance at all levels are less likely to present a risk to the licensing objectives and will receive less regulatory oversight as a result, although this reduced oversight will be proportionate to their potential impact.

### **Reviewing the risk**

**2.18** Once any regulatory action is completed, the risk is re-assessed to determine whether the desired outcome has been met in addressing the risk(s) or further attention is needed.

### 3 Licensing

3.1 This chapter sets out the Commission's approach to considering operating and personal licence applications, the kinds of evidence considered when assessing an application, and the process for assessing applications and notifying the outcome.

#### Who needs a licence?

3.2 Most providers of commercial gambling based in Great Britain **or providing remote gambling to consumers in Britain** require an operating licence. Further guidance as to the types of operation or activity that might be exempt from requiring an operating licence can be found on the Commission's website at [www.gamblingcommission.gov.uk](http://www.gamblingcommission.gov.uk)

3.3 Personal licences are required by those performing a specified management or operational function. The Commission consulted on the definitions of those who needed personal licences and of small scale operators<sup>37</sup> (where personal licence holders are not required) in 2006. The definitions subsequently adopted are outlined in the Licence Conditions and Codes of Practice (LCCP), a copy of which can be obtained from the Commission's website.

3.4 **Where an operator is required to have Personal Management Licence holders in specified management offices, the Commission expects that the person who occupies the Head of Compliance role will not normally also occupy one of the other specified management offices**<sup>38</sup>.

3.5 Those seeking a licence are required to submit an application form with the prescribed fee and supporting documentation.

#### Information and evidence

3.6 All applicants are required to supply the Commission with sufficient and complete information to support their application and in particular information that will enable an assessment on their suitability to be made. However, the Commission takes a risk based and proportionate approach to the amount and detail of information an applicant is required to provide. Guidance on the type of information required is included in the guidance notes that accompany the application form<sup>39</sup>.

3.7 The Commission may also seek evidence or opinions from other sources where that is appropriate or where its initial review has highlighted areas of concern. The sources the Commission may access include, but are not restricted to:

- ~~Criminal Records Bureau (CRB)~~ **Disclosure and Barring Service (DBS)** and Disclosure Scotland
- Court records
- Company Watch
- Companies House
- Dun & Bradstreet
- Equifax
- Financial ~~Services~~ **Conduct** Authority
- HMRC
- The Insolvency Service
- The Solicitors Regulation Authority
- The Law Society of Scotland

<sup>37</sup> The Gambling Act 2005 (Definition of Small-scale Operator) Regulations 2006

<sup>38</sup> **The Commission recognises that in exceptional circumstances this may be impractical, in which case the Commission may agree an exception should be made.**

<sup>39</sup> Operating Licence Application Forms Guidance Notes and the Personal Licence Application Forms Guidance Notes (as amended from time to time).

## Appendix B: Amendments to the *Licensing, compliance and enforcement statement*

- ~~Serious Organised~~ **National** Crime Agency
- sports governing bodies
- open source internet searches
- other regulators **in the UK and abroad**
- ~~overseas gambling regulators~~
- police forces in UK and abroad
- references provided to the Commission.

**3.8** If an application is incomplete or information required to support the application is missing or not provided upon request then it may be determined on the basis of the information the Commission has available to it. This may affect the decision on whether a licence can be granted.

### Assessment and determination of the application

**3.9** Each application is considered on merit and on the evidence available. In considering an application the Commission has regard to the licensing objectives and whether they are likely to be compromised, and the suitability of an applicant to carry out the licensed activities.

**3.10** In considering operating licence applications the Commission will include assessment of the suitability of those persons considered relevant to the application. The persons considered relevant may vary depending on the information provided in the operating licence application and on company structure, but are likely to exercise a function in connection with, or to have an interest in, the licensed activities. General guidance on who may be considered relevant is available on the Commission's website and in regulations<sup>40</sup>.

### Suitability

**3.11** When considering the suitability of an applicant the Commission has regard to the following elements and seeks evidence to support and enable an assessment to be made against each one:

- **Identity and ownership** – the identity of the applicant and or person(s) relevant to the application and in the case of an application for an operating licence, who ultimately owns a corporate applicant.
- **Finances** – financial and other circumstances of the applicant past and present and or person(s) relevant to the application. For operating licences this will include the resources likely to be available to carry out the licensed activities.
- **Integrity** – the honesty and trustworthiness of the applicant and/or person(s) relevant to the application.
- **Competence** – the experience, expertise, qualifications and history of the applicant and or persons relevant to the application.
- **Criminality** – criminal record of the applicant and or person(s) relevant to the application.

### Upholding the licensing objectives

**3.12** Applicants for an operating licence are asked about their policies for ensuring that the licensing objectives will be adhered to. Guidance is provided on the Commission's website and in the guidance notes that accompany the application form.

**3.13** In assessing policies the Commission is looking for an overall understanding of the legislation and evidence that arrangements will address the social responsibility requirements. **Where arrangements are considered to be inadequate, the Commission will pursue that with applicants. However, the responsibility for taking the lead in**

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<sup>40</sup> The Gambling Act 2005 (Definition of Small-scale Operator) Regulations 2006

## Appendix B: Amendments to the *Licensing, compliance and enforcement statement*

developing and updating measures designed to protect the licensing objectives lies principally with an operator.

### Considering applications

- 3.14** On considering an application for a licence the Commission is required to either: grant it; reject it; or, grant it in respect of one or more of the specified activities and reject it in respect of the others. In some circumstances the Commission may attach specific conditions to the licence, which may, for example, have the effect of restricting the activities that may be carried out in reliance on the licence.
- 3.15** **There is a positive obligation on applicants to show that they are able to satisfy the licensing objectives.**
- 3.16** The Commission evaluates the information it receives on each element of the assessment on a four point scale. The categories are as follows:

#### ***Inadequate***

This indicates that an applicant poses a substantial risk to the licensing objectives; or there are significant concerns about an applicant's suitability; or there is a risk of significant non-compliance with the requirements of the Act and the Commission's LCCP.

#### ***Just adequate***

This indicates that there is less risk to the licensing objectives; the applicant meets the minimum expectations regarding suitability; the applicant just meets the requirements of the Act and the Commission's LCCP.

#### ***Adequate***

This indicates that the applicant is unlikely to pose a risk to the licensing objectives; the applicant appears to be suitable to carry on the licensed activities in question; the applicant appears likely to be able to meet the requirements of the Act and the Commission's LCCP.

#### ***Good***

This indicates that the applicant is unlikely to pose a risk to the licensing objectives; the applicant has a proven track record of being able to carry on the licensed activities in question; the applicant has a proven track record of being able to meet the requirements of the Act and the Commission's LCCP.

- 3.17** The Commission will keep applicants up to date with the progress of their application. Where the initial assessment gives rise to any concerns or doubts, the Commission will, if it is possible to do so, seek to address those concerns or doubts with the applicant by requesting additional information or clarification. The one possible exception to this would be the criminal record of the applicant where the Act<sup>41</sup> allows for the refusal of an application **on that ground alone** if the applicant or a person relevant to the application has a conviction for a relevant offence<sup>42</sup>.
- 3.18** **While the Commission is willing to engage with applicants through requests for clarification or further information, it will seek to expedite matters at all times, and will not allow uncooperative applicants to delay licensing decisions. If licensing decisions are delayed due to applicants' failure to provide adequate information in good time, those applicants can expect their application to be determined on the**

<sup>41</sup> Section 71 Gambling Act 2005

<sup>42</sup> **Section 126(2) and** Schedule 7 Gambling Act 2005

## Appendix B: Amendments to the *Licensing, compliance and enforcement statement*

basis of the information the Commission has available to it, with the risk the application will be refused.

- 3.19 Given that all applicants are required to supply the Commission with sufficient information to support their application, the Commission would not expect an applicant to subsequently seek to make material changes to their application. If material changes are made, applicants are likely to be invited to withdraw their application and submit a new application, accompanied by the appropriate fee. If the application is not withdrawn it is likely that the application will be refused.

### Identity and ownership

- 3.20 The Commission requires individuals to provide identification information, as recommended by the CRB, **Disclosure and Barring Service (DBS)**, which is checked in accordance with their advice. The Commission will seek to follow up and resolve any inconsistencies, such as an indication on the CRB DBS record that states aliases have been used by an applicant. The Commission also asks for current photographs of personal licence applicants and will check that these are consistent with any photographs on identity documents.
- 3.21 The Commission will check records about companies and directors' records to ensure that we are clear that the correct **legal** entity is being licensed and to check whether there are any other related companies in a group, or historically related or common directors across a number of companies. If this is the case we may investigate related companies to understand the relationship.
- 3.22 The Commission will also want to ensure that it can establish who benefits from the gambling provided and therefore require that any shareholders with a 3% holding are listed and that those with over 10% holding complete an Annex A form to enable further checks to be carried out on them. If the beneficiary of any business is a Trust then the Commission will want to know who the beneficiaries of that Trust are.
- 3.23 If the applicant is a company based overseas or part of the company structure is based overseas then we would want a full description of the company structure and would satisfy ourselves that the overseas elements were either listed companies or that we knew of nothing untoward about them. We might carry out checks with overseas regulators.

### Finances

- 3.24 For operating licence applications, the Commission will ask for accounts from existing businesses or financial projections where the applicant is a new business. Our main focus is on assessing the resources likely to be available to enable a licensee to carry on the licensed activities. **The Commission does not purport to assess, on an ongoing basis, an operator's solvency; the Commission is principally interested in financial stresses that might lead to an increased likelihood of compliance failures.**
- 3.25 The Commission's approach is slightly different depending on whether an applicant is a new start up or an existing business. With new businesses we consider the overall viability of the business and may wish to make further enquiries if it appears that the resources available are inadequate or not properly secured. With existing businesses the Commission will consider the resources devoted to the gambling operation and the degree to which they could deliver the necessary arrangements for the provision to be compliant with the Act.

### Integrity

- 3.26 The Commission will consider whether the information it collects raises any concerns about integrity. This involves an assessment of an applicant's criminal record (further details of

## Appendix B: Amendments to the *Licensing, compliance and enforcement statement*

which appear below) or past involvement in civil or regulatory investigations or proceedings.

- 3.27** The Commission will consider the evidence and findings of complaints about the applicant and investigations by other regulators. The Commission will look into the applicant and other relevant persons to see if there has been a history of problems or business failure and will use open source checks to assist with that.

### Competence

- 3.28** The Commission will take up references and may review the CVs of the applicant or other relevant persons to assess their work experience and the training they have received which demonstrates their competence to carry out the role required of them.
- 3.29** For individuals who are likely to fulfil key senior roles, the Commission will look for evidence that the individual has some demonstrable experience, where appropriate, of working in a regulated industry and, if an individual has had no gambling experience, that suitable training or briefing in gambling regulation is planned.

### Criminality

- 3.30** The fact that an applicant has been convicted of a relevant offence will result in the criminality element of the assessment being marked inadequate. This does not mean that the application will automatically be refused. Each case will be considered on its individual facts and merits and consideration will be given to the seriousness, relevance and date of the conviction. The Commission may consider relevant offences which would otherwise be considered 'spent' under the Rehabilitation of Offenders Act 1974 when considering an application for a licence.<sup>43</sup> More information on the treatment of criminal convictions is set out below.
- 3.31** Once the assessment has been completed for each element of the application then an overall view is taken and marked on the same basis. The fact that one or more elements are 'just adequate' or less does not always mean that the licence will be refused. The overall evaluation is judged on a case by case basis having regard to the importance of the matters to which it relates and risk to the licensing objectives.
- 3.32** When considering the relevance of an offence the Commission will start from the basis that it will accept the information it receives regarding convictions from the ~~Criminal Records Bureau~~ **DBS** or Disclosure Scotland or the police as likely to be accurate. If there is any doubt about the accuracy of the information then it is the responsibility of the applicant to rectify the error with the reporting body. In any event, the Commission's processes are not a forum for running arguments which could have been put in a criminal appeal.
- 3.33** The fact that a person has been convicted of an offence will be considered as a contra-indicator of that person's suitability as it raises a question about the character and behaviour of the individual in question.
- 3.34** In evaluating the seriousness and relevance of an offence, the Commission's assessment will focus on whether the conviction has a potential bearing on suitability to hold a licence and will have regard to the public interest, which includes taking account of:
- the protection of the public
  - the maintenance of public confidence **in the gambling industry and the Commission**
  - the importance of upholding proper standards of conduct and competence by licensees.

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<sup>43</sup> Section 125 Gambling Act 2005

## Appendix B: Amendments to the *Licensing, compliance and enforcement statement*

- 3.35** Broadly, the Commission considers that the impact of a conviction on an applicant's suitability to hold a licence is likely to be a function of **related to**:
- the nature and seriousness of the offence
  - the relevance of the offence in the context of the licensed activities.
- 3.36** In order to assess the nature and seriousness of the offence the Commission will take account of all the evidence and information available about the offence. This will involve consideration of the facts and circumstances of the offence, including the individual's explanation and any further information about the offence, for example through any Amplified Police Report (APR) and sentencing remarks made by a Court.
- 3.37** Consideration of the nature and seriousness of an offence includes consideration of:
- the seriousness of the offence, its legal definition, the relevant criminal behaviour, including the degree of dishonesty, intent or recklessness involved
  - the sentence imposed
  - whether there is repeat offending or a pattern of offending, including the time period over which the offending occurred and the age and experience of the applicant at the time
  - evidence of rehabilitation or the lack of a capacity for rehabilitation
  - harm or loss suffered by any victim(s) of the crime and the nature of any victim(s).
- 3.38** The assessment of relevance will include consideration of whether, ~~if at all~~:
- the offence is a 'relevant offence' listed in Schedule 7 of the Act
  - the behaviour which led to the conviction was not only criminal but was also inconsistent with the licensing objectives
  - the relevance of the offence to the activities which the applicant would be permitted to carry out if granted a licence.
- 3.39** The Rehabilitation of Offenders Act 1974 provides that, after a prescribed period of time, certain convictions become 'spent'. This means that a person who was convicted of an offence is after that time 'rehabilitated' and is to be treated for all purposes in law as if he had never been charged with, convicted of or sentenced for the offence.
- 3.40** **However, as indicated above, by virtue of section 125 of the Gambling Act 2005, in the context of an application for an operating or personal licence, the** Rehabilitation of Offenders Act 1974 does not apply to ~~any offence specified in Schedule 7 of the Gambling Act 2005 as a 'relevant offence'~~. Therefore applicants must disclose relevant offences even if they would normally be spent and the Commission may refuse a licence on the grounds that the applicant (or a person relevant to the application) has a conviction for a 'relevant offence'.
- 3.41** When deciding what weight is to be attached to a conviction for a 'relevant offence', the Commission will take into account the passage of time since the offence was committed, the applicants' explanations of the circumstances of the offences and any information or reports which are available relating to the conviction.
- 3.42** When considering the applicant's suitability to carry on the licensed activities, as required by section 70 of the Act, the Commission will also have regard to the applicant's unspent convictions **for offences other than 'relevant offences'**. Again, the Commission will take into account the passage of time since the offences were committed and the applicant's explanations of the circumstances of the offences.
- 3.43** The Commission will disregard spent convictions that do not relate to 'relevant offences'.



## Appendix B: Amendments to the *Licensing, compliance and enforcement statement*

### Communicating the final decision

- 3.44** All applicants will be informed in writing of the decision on their application. Where the Commission is minded to make a decision to refuse the application, grant in part or to attach specific conditions to the licence the applicant will be given the opportunity to make representations before that decision is finalised. Details of these arrangements and subsequent appeals processes including appeals to the ~~Gambling Appeal~~ **First-tier Tribunal (Gambling)** are contained on the Commission's website.
- 3.45** If the applicant is successful then a licence will be issued either by email or in hard copy. For operating and personal licences relevant details of the licence will be published in the public register<sup>44</sup> on the Commission's website.

### What happens after the licence has been issued?

- 3.46** Once a licence has been granted and issued, it is important that licensees read through it to check that the details on the licence are correct and that they are familiar with the conditions attached to the licence and the changes and matters that licensees must keep the Commission informed of whilst they are the holder of a licence<sup>45</sup>.
- 3.47** The Act requires the holders of operating licences to pay an annual fee for their licence, in advance. The first annual fee is due within 30 days of the licence being issued. Subsequent payments will be required before the anniversary date, that is the date of issue of the licence<sup>46</sup>. The Commission will remind licensees about the need to pay their annual fee approximately six weeks before each fee is due. Failure to pay annual fees by the due date may lead to the revocation of a licence.
- 3.48** Holders of personal licences will be required to pay a fee every five years to maintain their licence.<sup>47</sup> Full details of the fee to be paid and any additional information the Commission may require will be requested at least six weeks before the fee is due. Failure to pay the fee will ultimately lead to the revocation of a licence.

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<sup>44</sup> The Commission maintains a register of operating licences relating to each licence under the provisions of Section 106 of the Act

<sup>45</sup> Licence Conditions and Codes of Practice (as amended from time to time).

<sup>46</sup> The Gambling (Operating Licence and Single-Machine Permit Fees) Regulations 2006 (as amended)

<sup>47</sup> The Gambling (Personal Licence Fees) Regulations 2006 (as amended)

## 4 Compliance

4.1 Once an operator or individual holds a licence, the Commission seeks to ensure, through its compliance work, that the licensee remains suitable to hold licences and that they conduct themselves in a way which is consistent with the licensing objectives, the requirements of the Act and the conditions of their licences and related codes of practice. This chapter of the document outlines the manner in which the Commission will carry out its compliance activities.

### Advice and assessment

4.2 **The Commission will undertake compliance activity in a variety of ways. The Commission will provide advice to licensees to help them comply with the requirements of the legislation and the licence conditions and codes of practice which apply to them.**

4.3 **The Commission may also undertake desk based assessment, or may telephone licensees to assess compliance.**

### The purpose of assessments and visits

4.4 The purpose of an assessment ~~and visit~~ is to:

- ensure that the licensee remains suitable to hold a licence
- check that the licensee is conducting their activities in a manner which is consistent with the licensing objectives
- ensure that the licensee is complying with the requirements of the Act and relevant regulations
- ensure that the licensee is complying with the Commission's LCCP that apply to the licence held.

4.5 Assessments ~~and~~, **which may include visits**, will be used proportionately, as the Commission will seek to target those areas of greatest risk to the licensing objectives.

4.6 Assessments ~~and visits~~ also offer an opportunity for the Commission to promote good practice, as well as offering licensees an opportunity to seek advice and to provide feedback to the Commission, which can be used to continually improve its processes and procedures.

### Notification

4.7 The Commission may give advance notice of its intention to visit a licensee and provide details of the process and procedures to be followed. This will provide the licensee with clarity about what will be required and gives the licensee an opportunity to prepare and to minimise potential disruption to the licensed activities being undertaken. However, assessment visits may be made without prior notice.

### The frequency of assessments and visits

4.8 The frequency and focus of assessments ~~and~~, **including** visits is based on the risk assessment of the licensee, which takes into account a variety of factors, including the likelihood and potential impact of non compliance by the licensee.

### General conduct

4.9 The Commission will:

- act reasonably in discharging its powers under the Act and conducting assessments ~~and visits~~

## Appendix B: Amendments to the *Licensing, compliance and enforcement statement*

- exercise its powers under the Act fairly, responsibly and with due respect for other parties involved
- explain what information is required, and why, to ensure requests are appropriate, proportionate, minimise disruption to the business, and enable the relevant person to comply fully with the request
- seek the co-operation of others wherever possible and only use its statutory powers when necessary.

### Requests for information

- 4.10** A request for the production of any records or to provide an explanation of records will be made either orally or in writing, dependent upon the individual circumstances of each case. Wherever possible, licensees will be given a reasonable period of time to comply with the request. The Commission will seek to take into account the burden placed on the individual or business when removing records so that it causes minimal disruption.
- 4.11** The Commission will only ask a licensee to produce documents or records which it **believes it** needs and will only remove them if it is **considered** necessary. Generally, the Commission will copy documents or records and leave the original records with the licensee. When any document or record is removed, the Commission will give an explanation of why it considers this is necessary and provide a receipt. Any documents which have been removed will be returned as soon as possible after the need for their retention has passed. Where an information request is made orally on a visit a record will be made of the request, what has been requested and the time and place for its production.

### The Data Protection Act 1998 (DPA)

- 4.12** The Commission considers that licensees will not breach the requirements of the DPA if they supply information that the Commission has requested even if this relates to personal information that they hold. The Commission has the power to request this information under the Act.

### Publication of assessment reports

- 4.13** When an assessment has been carried out, the licensee will be notified of the result and any further action that is being taken, or should be taken, as soon as possible. The Commission will not normally give, either orally or in writing, any indication as to the result of the assessment at the time it is conducted.

## Dealing with compliance issues

### Required improvements

- 4.14** During the course of an assessment visit, compliance issues may be identified which require improvements to be made. Wherever possible, the Commission will explain to the licensee why any changes need to be made, the basis for requiring the changes and a timeframe in which required improvements should be carried out.

### Complaints about licensees

- 4.15** Whilst the Commission does not have a specific statutory duty to investigate complaints about licensees, depending on the issues raised the Commission may decide to look into matters relating to the complaint. Further details of the Commission's approach to complaints can be found in the Commission's Complaints Policy which is on the Commission's website [www.gamblingcommission.gov.uk](http://www.gamblingcommission.gov.uk)

## Appendix B: Amendments to the *Licensing, compliance and enforcement statement*

### Risk assessment and proportionality

- 4.16 The decision about how best to deal with any issues will be informed by an assessment of risk. This will ensure that the Commission's resources are focussed primarily on those operators, individuals and activities which present the greatest risks to the licensing objectives.

### Evaluation

- 4.17 As part of its compliance activities, the Commission will:
- assess and evaluate compliance consistently and in accordance with the Commission's ~~Risk Assessment~~ **risk assessment** methodology
  - consider the ongoing suitability of the licensee by looking at the following factors, plus other matters, where appropriate (the list is not exhaustive):
    - finances
    - integrity
    - competence
    - criminality
  - consider whether the licensed activities are being conducted in a manner which is consistent with the licensing objectives
  - check that the licensee is complying with the requirements of the Act
  - ensure compliance with the licence conditions and codes of practice that apply to the licence, amongst other things by reference to the controls which the licensee has put in place.
- 4.18 In carrying out this assessment, the Commission will use the following framework, which mirrors the framework for assessing licence applications:

#### ***Inadequate***

This indicates that a substantial risk to the licensing objectives; or significant concerns about the licensee's suitability; or significant non-compliance with the requirements of the Act and the Commission's LCCP.

#### ***Just adequate***

This indicates that there is less risk to the licensing objectives; the licensee meets the minimum expectations regarding suitability; the licensee just meets the requirements of the Act and the Commission's LCCP.

#### ***Adequate***

This indicates that the licensee is unlikely to pose a risk to the licensing objectives; the licensee appears to be suitable to carry on the licensed activities in question; the licensee appears to be meeting the requirements of the Act and the Commission's LCCP.

#### ***Good***

This indicates that the licensee is unlikely to pose a risk to the licensing objectives; the licensee is able to clearly demonstrate that the licensed activities in question are being conducted in accordance with the requirements of the Act and the Commission's LCCP.

### Providing advice

- 4.19 Where the assessment of a licensee identifies an issue which needs to be addressed, where appropriate the Commission will seek to encourage the licensee to take action to address the issue. This may be done by officials, in addition to issuing standard

## **Appendix B: Amendments to the *Licensing, compliance and enforcement statement***

documentation required under the inspection regulations, providing information to the licensee. Where such information is provided, the Commission will endeavour to distinguish between what are mandatory requirements and what is advice or guidance about what is desirable but not mandatory.

### **Concerns about suitability**

- 4.20** Where the Commission's compliance activities give rise to concerns about the suitability of the licensee to carry out the licensed activities, or concerns about the circumstances under which the licensed activities are being carried on, the matter may be dealt with in accordance with the Commission's procedures for enforcement, which are set out in Chapters 5 and 6.

## 5 Dealing with non-compliance

5.1 The Commission's role is to uphold the licensing objectives set out in the Act. If the Commission can achieve those objectives without time-consuming, costly and burdensome enforcement action, it will do so. There are two principal means by which the Commission fulfils its statutory obligations without resorting to formal action: enhanced compliance and voluntary settlement.

5.2 While enhanced compliance and voluntary settlement are important parts of the Commission's toolkit, the Commission will not accept undertakings from licensees in cases where regulatory or criminal enforcement is justified as a proportionate means of achieving the licensing objectives.

### **Enhanced compliance and voluntary settlement without a licence review**

5.3 Where concerns have been raised about an operator, and a decision has not yet been taken to carry out a licence review, the Commission is open to the possibility of resolving matters by means that fall short of formal sanction. If the Commission can pursue and protect the licensing objectives through means that stop short of formal regulatory or criminal action, it will do so.

5.4 There is no limit on the type of action by a licensee that could satisfy the Commission. The onus will at all times be on the licensee to suggest actions that might prevent or suspend formal action by the Commission. Such actions might include, for example, a commitment to improve money-laundering controls, or to retrain staff in areas such as the protection of vulnerable individuals from harm.

5.5 In deciding whether enhanced compliance is sufficient to protect the licensing objectives, the Commission will take the following matters into account (the list is not exhaustive):

- the nature and extent of the concerns
- whether concerns have been raised about the licensee in the past
- the scale of the concerns across the licensed entity
- the involvement of senior management
- the extent of any attempt to conceal any failure
- the impact on customers
- the absence of internal controls or procedures intended to deal with the particular concern
- the way in which concerns were reported to the Commission.

5.6 On its website, ([www.gamblingcommission.gov.uk](http://www.gamblingcommission.gov.uk)) the Commission may give examples of where it has decided not to investigate or take enforcement action in relation to possible breaches, because of the way in which the licensee has conducted itself when putting the matter right.

5.7 In those cases where enforcement action is not taken and/or a formal review is not commenced, the Commission will expect the operator to act promptly to take the necessary remedial action agreed to deal with the Commission's concerns. If the operator does not do this, the Commission may take enforcement action in respect of the original contravention.

5.8 In complex cases, which due to their scale, complexity or novelty are of strategic importance to the Commission, the final proposals for resolving a matter will be referred to the Regulatory Panel for endorsement.

## Regulatory enforcement

**5.9** In its widest sense, enforcement includes the regulatory or criminal investigation processes, which may result in the exercise of the Commission's regulatory powers under the Act, or the commencement of a prosecution and the laying of criminal charges. Enforcement forms an essential part of the Commission's work to keep gambling fair and safe for all.

~~This chapter sets out the Commission's policy in relation to its regulatory enforcement functions, namely:~~

- ~~• licence reviews~~
- ~~• the exercise of the Commission's regulatory powers after a licence review~~
- ~~• the exercise of the Commission's other regulatory powers.~~

**5.10** **The Commission's effective and proportionate use of its enforcement powers plays an important role in the pursuit of the licensing objectives. Using enforcement helps to contribute to the protection of consumers and to deter future contraventions of the Act and other applicable requirements. It can also be a particularly effective way, through publication of enforcement outcomes, of raising awareness of regulatory standards. There are a number of principles underlying the Commission's approach to the exercise of its enforcement powers:**

- The effectiveness of the regulatory regime depends to a significant extent on maintaining an open and co-operative relationship between the Commission and the licensed community.**
- The Commission will seek to exercise its enforcement powers in a manner that is transparent, proportionate, responsive to the issue, and consistent with its publicly stated policies.**
- The Commission will seek to ensure fair treatment when exercising its enforcement powers.**
- The Commission will aim to change the behaviour of the operator or person who is the subject of its action, to deter future non-compliance by others, to eliminate any financial gain or benefit from non-compliance, and where appropriate, to remedy the harm caused by the non-compliance.**

## Licence reviews

### What are licence reviews?

**5.11** Section 116 of the Act gives the Commission the power to review, over time, the performance of licence holders and the operation of licence conditions. The section provides for two different types of review.

**5.12** Under section 116(1) of the Act the Commission may review matters relating to a class, or type, of licence. The purpose of such a review will be to review the manner in which a particular class of licensees carry on the licensed activities authorised by their licences, and, in particular, how the licensees in question comply with the conditions attached to the class of operating licence.

**5.13** Section 116(2) of the Act gives the Commission the power to review any matter relating to an individual licence if the Commission:

- suspects that conditions of a licence have been or are being breached
- believes that the licence holder or any person connected with the gambling activities, has been convicted of a relevant offence in Great Britain or abroad; or

## Appendix B: Amendments to the *Licensing, compliance and enforcement statement*

- for any reason:
  - suspects that the licence holder may be unsuitable to perform the licensed activities
  - thinks that a review would be appropriate.

**5.14** A review can be carried out even if there is no suspicion or belief about the licence holder's activities. This means that a licence could be reviewed solely on the grounds that the Commission considers a review would be appropriate. There will, however, always be a reason for **starting** a review, **whether at one extreme it is part of a sampling exercise to enable the Commission to maintain a good understanding of the industry, or a potentially licence-threatening concern at the other extreme; the Commission will ensure that the letters sent to licensees when a review is being initiated clearly explain the grounds for the review.**

### The process for reviewing a class or type of licence

**5.15** The Commission may decide to review a class or type of licence. There are many reasons why the Commission may wish to do this. For example, the Commission may wish to assess the manner in which the licensed activities authorised by a class or type of licence are being carried out; the Commission may wish to review whether the conditions attached to the class of operating licence are being complied with; or, the Commission may decide to review a class of licences in order to ensure that the conditions **and codes** that apply to those licences remain appropriate.

~~In practice, most reviews carried out under section 116 of the Act remain likely to take place in relation to individual licences.~~

### The process for reviewing an individual licence

**5.16** At any stage in the review process the Commission has the option to:

- decide that there should be no further action
- decide to issue advice to the licensee rather than continue the review
- agree to a licensee's proposals regarding voluntary settlement.

**5.17** There may also be occasions when information gathered during the review leads the Commission to conclude that it should commence a criminal investigation, or should refer the matter to the police or another regulatory body for consideration by them.

### Commencing a review of an individual licence

**5.18** Before commencing a review of an individual operating or personal licence, the Commission must notify the licensee and inform him or her of the procedure to be followed in the conduct of the review. In most cases the Commission will fulfil this obligation by issuing a notice to the licensee, which sets out:

- the grounds for commencing a review
- the procedure to be followed
- confirmation of the licensee's right to make representations, the form of those representations (oral and written) and when those representations should be made.

**5.19** The Commission will normally include an indication of whether it intends to give other persons an opportunity to make representations. The notice will confirm the fact that the Commission is undertaking a licence review, as opposed to a criminal investigation ~~and that the Commission will only take criminal action where, in response to a request for information, the licensee or any person appointed to act on behalf of the licensee provides false or misleading information to the Commission.~~ **However, in such cases, if further incriminating information comes to light, the Commission may commence a criminal investigation. When a criminal investigation becomes a possibility, the Commission will notify the licensee of that fact.**



## Appendix B: Amendments to the *Licensing, compliance and enforcement statement*

- 5.20** In the case of reviews of operating licences, the holder of an operating licence will also be reminded that it is an offence, under section 122 of the Act, to fail without reasonable excuse to comply with a request to produce written or electronic records or information about the licensed activities.

### Initial meeting

- 5.21** **The Commission may, either when it is considering whether to commence a licence review, or after notifying a licensee that it proposes to commence a review but** before proceeding with the review or requesting specified information, hold an initial meeting with the licensee to clarify and narrow the issues and to establish exactly what information will be required by the Commission if it commences a review. **However, in many cases, such an initial meeting will be unnecessary because the issues will be sufficiently clear.**
- 5.22** **Furthermore, in cases where the Commission has already undertaken an investigation (for example, where a case began as an enhanced compliance case) or where the circumstances of the case do not require any further investigation, the Commission may include in the notice its preliminary findings and conclusions about the appropriate formal regulatory sanction.**

### Interviews

- 5.23** In addition to requesting specified information, the Commission may wish to interview persons who it considers can supply relevant information in connection with the review. Such interviews may be recorded on tape ~~and where necessary the person being interviewed will be reminded.~~ **Where necessary and appropriate the interview will be conducted under regulatory caution and the interviewee reminded** that the Commission may draw adverse inferences if they do not provide answers to the Commission's questions. **If an interview is recorded on tape and the Commission intends to use the transcript as evidence, it will inform the interviewee.**
- 5.24** In Scotland, where the Commission determines to carry out an interview of an individual suspected of committing an offence that person will be issued with a caution but under Scottish law no adverse inference may be drawn from a failure to answer questions.

### Preliminary findings following an investigation

- 5.25** At the conclusion of the review **(including in circumstances such as those referred to in paragraph 5.22)**, the Commission will send a preliminary findings letter to the licensee. The letter and documents which accompany it will contain details of:
- the facts found during the review
  - where relevant, how those facts relate to any apparent breach of a licence condition or **social responsibility provision** of a code of practice, **or show an apparent disregard for an ordinary code provision**
  - a preliminary assessment of the seriousness of the case in terms of possible outcomes
  - any relevant policy considerations
  - in appropriate cases, **notification** that **a Regulatory Panel will take** the decision **as to** what (if any) regulatory action should follow the review ~~will be taken by a Regulatory Panel.~~
- 5.26** The preliminary findings letter will also normally set out the details of the documents, and other evidence on which the Commission relies and details of any documents which might be said to undermine the Commission's or assist the licensee's case.

## Appendix B: Amendments to the *Licensing, compliance and enforcement statement*

### Representations by the licensee

- 5.27** The licensee will then be offered the opportunity to make written representations in response to the Commission's preliminary findings. Licensees will normally be given 28 days to make representations, but there may be occasions when a shorter period is appropriate.
- 5.28** ~~Personal licensees~~ **Licensees** who feel unable to prepare a written response will be offered the opportunity to make oral representations, which will be recorded in writing by the Commission.

### The Commission's regulatory powers

- 5.29** Following a review under section 116(1) or (2) of the Act, the Commission may:
- decide to take no further action
  - decide to give the licensee advice as to conduct
  - give the licensee a warning
  - add, remove or vary a condition to the licence
  - suspend a licence
  - revoke a licence
  - impose a financial penalty **for breach of licence condition**.

### Financial penalties

- 5.30** A financial penalty can be imposed either following a review, or without a review having taken place, but may only be imposed where the Commission thinks that a condition of a licence has been breached (which by virtue of section 82 of the Act includes a breach of a social responsibility provision of a code of practice).
- 5.31** Section 121(6) of the Act requires the Commission to prepare a statement setting out the principles to be applied by the Commission in exercising its powers to impose financial penalties and to have regard to the statement when exercising a power under this section.
- 5.32** A copy of the Statement of Principles for Determining Financial Penalties can be found on the Commission's website.

### Suspension at the outset or during a review

- 5.33** The Commission has the power to suspend a licence at the outset of, or during, a review if the Commission suspects that:
- a licensed activity is being or has been carried on in a manner which is inconsistent with the licensing objectives
  - a condition of the licence has been breached
  - a licensee has failed to cooperate with a review
  - the licensee is unsuitable to carry on the licensed activities.
- 5.34** Therefore, if the Commission considers a matter sufficiently serious, it can require an operator to suspend all or part of the activities authorised by the licence pending the outcome of the review. **The Commission will normally only suspend a licence (at the outset of, or during, a review) if there is an urgent need to protect the public interest.**
- 5.35** If the Commission decides to suspend a licence in such circumstances, the licensee will be informed that they may have that decision reviewed by the Commission's Regulatory Panel. If such a review is requested, a meeting of the Regulatory Panel will be convened as soon as practical, ~~normally within three days.~~

## **Appendix B: Amendments to the *Licensing, compliance and enforcement statement***

**5.36** As an alternative to suspension the Commission may be prepared to agree conditions under which the licensee may continue to operate or work, for example subject to the Commission receiving satisfactory undertakings restricting, or accepting supervision arrangements in respect of, the activities which will be carried on whilst the review is in progress.

### **Suspension or revocation of a licence following a review**

**5.37** The Commission may suspend or revoke a licence if, following a review, the Commission considers that:

- a licensed activity is being or has been carried on in a manner which is inconsistent with the licensing objectives
- a condition of the licence has been breached
- a licensee has failed to co-operate with a review
- the licensee is unsuitable to carry on the licensed activities.

### **Assessing suitability**

**5.38** In assessing the suitability of an applicant to carry on licensed activities, section 120 of the Act provides that the Commission may, in particular, have regard to:

- the integrity of the licensee or of any person who exercises a function in connection with or is interested in the licensed activities
- the competence of the licensee, or of any person who exercises a function in connection with the licensed activities, to carry on the licensed activities in a manner consistent with pursuit of the licensing objectives
- the financial and other circumstances of the licensee or of any person who exercises a function in connection with or is interested in the licensed activities (and, in particular, the resources available for the purpose of carrying on the licensed activities).

**5.39** This means that the Commission will consider, amongst other things, a licensee's integrity (which includes an assessment of his or her honesty and openness), his or her competence and any other relevant financial or other circumstances including the resources available to carry on the licensed activities (for example, human resources, financial resources and the adequacy and effectiveness of the systems and controls which are in place).

**5.40** The assessment of suitability in relation to the Commission's enforcement functions will assess many of the same matters which were assessed when the licence was originally granted. However, the Commission may also look at other matters as circumstances require. As such the factors described above are not intended to be an exhaustive list of the factors to be considered.

**5.41** **As with initial applications, there is an obligation on licensees during a review to satisfy the Commission that they are capable of operating consistently with the licensing objectives.**

### **Assessing whether the licensed activities are being carried out in a manner which is inconsistent with the licensing objectives**

**5.42** In deciding whether or not a person has carried on a licensed activity in a manner which is inconsistent with the licensing objectives, the Commission will have regard to its own codes of practice and any other statements it has made (for example, through guidance notes or advice as to conduct letters) about pursuing the objectives.

## Appendix B: Amendments to the *Licensing, compliance and enforcement statement*

### Voluntary settlement after a licence review has been commenced

- 5.43** ~~Carrying out licence reviews can be expensive and time-consuming.~~ **Even once a decision has been taken to carry out a licence review, the possibility of voluntary settlement remains.** The Commission is ~~therefore~~ keen to encourage ~~licensees~~ **operators** to come forward and make full disclosure of all the relevant facts relating to a matter, at as early a stage as possible.
- 5.44** Where a licensee makes a full disclosure of all the relevant facts, the Commission will consider whether its investigations need to continue, or whether the Commission is prepared to agree the facts and the nature of the sanction (if any) which ought to be imposed, or in appropriate cases what action short of formal sanction should be taken.
- 5.45** The earlier disclosure is made in the investigation process, the more credit will be given to the licensee for making full disclosure of all the relevant facts. ~~Licensees will also be given credit for disclosing a regulatory breach to the Commission before a licence review has commenced.~~
- 5.46** **Voluntary settlements in the Commission context are not the same as ‘out of court’ settlements in the commercial context. A voluntary settlement is a regulatory decision, taken by the Commission, the terms of which are accepted by the licensee concerned. So, when agreeing the terms of a settlement, the Commission will carefully consider its statutory duties and other relevant matters such as the importance of sending clear, consistent messages through enforcement action, and will only settle in appropriate cases where the agreed terms of the decision result in acceptable regulatory outcomes. It may be particularly important in this respect to provide redress to consumers who may have been disadvantaged by an operator’s misconduct, or to relieve operators of the profits or gross gambling yield resulting from their misdeeds. In many circumstances, voluntary settlements will result in some degree of publicity (see chapter 7), unlike commercial out of court settlements, which are often confidential.**
- 5.47** The Commission will not **normally** initiate the voluntary settlement process, but will remind licensees at the outset of the review process that such an option exists. **Furthermore, the Commission considers that in general, the earlier settlement discussions can take place, the better this is likely to be from a public interest perspective. However, the Commission will only engage in such discussions once it has a sufficient understanding of the nature and gravity of the suspected misconduct or issue to make a reasonable assessment of the appropriate outcome.**

### ~~Voluntary settlement in relation to criminal investigations~~

~~The voluntary settlement process will not apply where the Commission decides to carry out a criminal investigation.~~

- 5.48** **In the interests of efficiency and effectiveness, the Commission will set clear and challenging timetables for settlement discussions to ensure that they result in a prompt outcome and do not divert resources unnecessarily from progressing a case through the formal process. To this end, the Commission will aim to organise its resources so that the preparation for the formal process continues in parallel with any settlement discussions. The Commission will expect operators and others to give it all reasonable assistance in this regard.**
- 5.49** **Cases which due to their scale, complexity or novelty are of strategic importance to the Commission will be referred to a Regulatory Panel for consideration.**

## The Commission's other regulatory powers

### What other regulatory powers does the Commission have?

- 5.50** The Commission has regulatory powers which it can exercise without carrying out a licence review. The Act gives the Commission the power to:
- impose a financial penalty, where the Commission thinks that a condition of a licence has been breached
  - void a bet
  - decide that a licence has lapsed if a licensee becomes incapable of carrying on the licensed activities by reason of mental or physical incapacity,
  - revoke a licence for non-payment of an annual fee (**which is a duty under the Act**).

### Financial penalties

- 5.51** The Commission has the power to impose a financial penalty, without a review having taken place, where the Commission considers that a condition of a licence has been breached (which by virtue of section 82 of the Act includes a breach of a social responsibility provision of a code of practice).
- 5.52** As indicated above, the Commission has prepared a Statement of Principles for Determining Financial Penalties which can be found on the Commission's website at [www.gamblingcommission.gov.uk](http://www.gamblingcommission.gov.uk)

### Voiding bets

- 5.53** The Commission has the power to make an order voiding an individual bet accepted by, or through, the holder of a general betting operating licence, a pool betting operating licence, or a betting intermediary operating licence. Where the Commission exercises this power, any contract or other arrangement relating to the bet will be void, and any money paid in relation to the bet must be returned to the person who paid it. Such repayments will be enforceable as a debt. The power to void a bet only applies to the parties to a specific bet; it does not apply to all bets placed on an event.
- 5.54** The Commission may only make an order to void a bet if it is satisfied that the bet was substantially unfair. In considering whether a bet is substantially unfair, the Commission must, in particular, have regard to any of the following factors:
- that one or both of the parties to the bet (whether they made or accepted the bet) supplied information in connection with it that was insufficient, false or misleading
  - that one or both of the parties to the bet believed, or ought to have believed, that the race or event about which the bet was made was, or would be, conducted in contravention of ~~the~~ **any** industry rules that apply to the event
  - the fact that one or both of the parties to the bet believed, or ought to have believed, that the offence of cheating (as set out in section 42) had been, or was likely to be, committed in relation to the bet
  - the fact that one or both parties to the bet have been convicted of the offence of cheating as set out in section 42 of the Act.
- 5.55** It follows that the Commission will not automatically void a bet where one of the factors listed above exists; it will only void a bet where it is satisfied that it was substantially unfair.
- 5.56** The power to void a bet will be available to the Commission for a period of six months from the day on which the result of the bet is determined, except where there has been a conviction for cheating, in which case there is no time limit.

## Appendix B: Amendments to the *Licensing, compliance and enforcement statement*

- 5.57** The Commission also has the power, under section 338 of the Act, to make an order freezing any obligation to pay money in relation to a bet, where it suspects that it may need to make an order that the bet is void under section 336. The effect of this interim moratorium is to protect any payments that would otherwise have been made in relation to a bet. The Commission need not be certain that a voiding order will be made before imposing the interim moratorium.
- 5.58** An interim moratorium will last for a period of 14 days, beginning on the day that it is made. The Commission may extend an interim moratorium by a further period of up to 14 days and there is no limit to the number of interim moratoria that the Commission may impose in relation to any bet, although the time limit of six months for making an order to void a bet will continue to apply during any period when an interim moratorium is in place.
- 5.59** The Commission may cancel an order for an interim moratorium before it expires; and must cancel it if it ceases to think that it might want to make an order to void the bet.

### **Surrender of a licence**

- 5.60** A licence ceases to have effect if it is surrendered to the Commission. This provides a voluntary procedure for a licence holder to give up their licence if they so wish.
- 5.61** However, if a licensee surrenders the licence whilst a licence review under section 116 of the Act is under way, the Commission may decide to continue its investigations in order to determine the facts of the case so that they can be referred to in the future, for example if the licensee subsequently applies for a new licence.

### **Lapse**

- 5.62** A licence will lapse, and is not transferable, if the licence holder dies or becomes bankrupt or goes into liquidation; **the Commission has no discretion in such cases. In the case of bankruptcy or liquidation, operators should do their utmost to anticipate problems before they arise.** A licence will also lapse if, in the Commission's view, the licensee becomes incapable of carrying out the licensed activities by reason of mental or physical incapacity. In such cases, the Commission will consider all of the circumstances of the case before making a decision, which may involve seeking medical advice about the licensee.

### **Revocation for non-payment of annual fee**

- 5.63** Failure to pay annual fees by the fee due date ~~may~~ **will ordinarily** lead to the revocation of an operator's licence. **The Commission has a statutory duty to revoke an operating licence if the licensee does not pay the annual fee (or a personal licence if the periodic maintenance fee is not paid) unless, before it does so, it concludes that the failure to pay was attributable to administrative error.**

## 6 Investigation and prosecution of offences under the Gambling Act 2005

6.1 This chapter sets out the Commission's policy in relation to the investigation and prosecution of offences under the Act, including the Commission's powers, and the relationship between criminal and regulatory investigations.

### The prevention of illegal gambling

6.2 The general framework set by the Act is that providing facilities for gambling is illegal unless provided:

- in accordance with certain specific exemptions in the Act
- in certain cases (for example, machine gaming in pubs and clubs and small scale lotteries) under permits or other arrangements administered by local authorities
- by a person who holds a licence issued by the Commission.

6.3 The prevention of illegal gambling is a key priority for the Commission. The Commission's ~~Strategic Assessment and Tactical Assessments~~ **assessments** will set the Commission's enforcement priorities. Those priorities will alter to meet changes in the assessment of risks and the Commission will allocate enforcement resources to the areas of greatest risk.

6.4 Combating illegal gambling also benefits licensed operators, as the provision of illegal unregulated gambling has both a reputational and economic impact on the gambling industry as a whole.

### The Commission's powers to investigate offences under the Act

6.5 Under section 27 of the Act the Commission may undertake activities for the purpose of assessing compliance with provision made by or by virtue of the Act and whether an offence is being committed under the Act. By virtue of section 28 of the Act the Commission has the power to investigate whether an offence has been committed under the Act and may institute criminal proceedings in respect of offences under the Act in England and Wales. In Scotland, the power to institute criminal proceedings rests solely with the Crown Office and Procurator Fiscal Service (COPFS). At the conclusion of an investigation in Scotland, the Commission may prepare a report to COPFS recommending criminal proceedings.

### The relationship between regulatory and criminal investigations

6.6 As a general rule the Commission will not normally pursue a criminal investigation into a licensed operator, as in most cases the matter under investigation is likely to be capable of being dealt with by the exercise of the Commission's regulatory powers. However, there might be circumstances where the commencement of a criminal investigation was merited, for example, if a licensee were suspected of cheating under section 42 of the Act (which carries the possibility of a longer period of imprisonment, if convicted), or if a licensee knowingly misled or provided false information to the Commission, contrary to section 342 of the Act.

6.7 There may be circumstances where the Commission's investigations uncover evidence that a serious criminal offence may have been committed, which falls outside the Commission's jurisdiction to investigate. In such cases the Commission may pass the information it possesses to the police, or another body, for consideration by them.

## Appendix B: Amendments to the *Licensing, compliance and enforcement statement*

### Deciding whether to institute criminal proceedings

- 6.8** The Commission recognises that there should be a separation of functions between the investigative process and the decision regarding whether or not a criminal prosecution should take place. At the conclusion of a criminal investigation, the case will be thoroughly reviewed before a decision is taken. In Scotland, this review will take place before a decision is taken on whether or not to report a case to COPFS.
- 6.9** The Commission will apply the Code for Crown Prosecutors when deciding whether criminal proceedings should be commenced, which involves a two-stage test:
- first, the evidence will be reviewed and an assessment made about whether there is a realistic prospect of conviction
  - secondly, if there is sufficient evidence to mean that there is a realistic prospect of conviction, an assessment will be made about whether it is in the public interest for a prosecution to take place.
- 6.10** The Code for Crown Prosecutors lists a number of common public interest factors which either favour or are against prosecution. A copy of the code can be found on the Crown Prosecution Service's website<sup>48</sup> and in the event that the Code is revised the Commission may need to review its own processes accordingly.
- 6.11** In Scotland the Commission will follow the guidance to Specialist Reporting Agencies in the preparation of reports to COPFS.

### Time limits

- 6.12** Section 347 of the Act establishes prosecution time limits for relevant offences **under the Act** and disapplies section 127(1) of the Magistrates Courts Act 1980. This means that any information in connection with an offence committed under the Act has to be laid before the Magistrates within the period of 12 months beginning with the date (or last date) on which the offence was alleged to have been committed. Where an offence is continuing in nature then the relevant date is the last date on which the offence was committed.
- 6.13** This time limit does not apply to the offence of cheating, under section 42 of the Act as cheating is triable either way. Conviction on indictment also carries the possibility of a longer sentence of imprisonment than other offences under the Act.

### Cautions

- 6.14** In appropriate cases, where the Commission has investigated a matter and both the evidential and public interest tests are met, the Commission may decide to issue a caution to the alleged offender, rather than pursue a prosecution. Where a caution is administered, details of the caution will be kept on file and may be taken into account in the future if further breaches occur.

### Prosecutions in Scotland

- 6.15** The Commission does not have the power to commence criminal proceedings in Scotland, but as a Specialist Reporting Agency can recommend criminal proceedings to the COPFS. Therefore the Commission has the power to carry out investigations in Scotland and where it does so it will investigate the matter in accordance with the requirements of the Scottish legal system and in accordance with the COPFS Guidance to Specialist Reporting Agencies. A case file/report will be prepared for submission to the COPFS, who will make the decision on whether or not to prosecute.

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<sup>48</sup> [www.cps.gov.uk](http://www.cps.gov.uk)



## **Appendix B: Amendments to the *Licensing, compliance and enforcement statement***

- 6.16** The Commission will work towards presenting the file/report to the Crown Office Procurator Fiscal Service within six months of the alleged offence(s).
- 6.17** The capacity to issue a formal caution for a criminal offence does not exist in Scotland. The COPFS has the power to issue warnings and impose financial penalties as a direct alternative to prosecution.

### **Proceeds of crime**

- 6.18** The Commission is committed to a multi-agency approach to ensuring that crime does not pay.
- 6.19** The Commission is an accredited agency and has powers under the Proceeds of Crime Act 2002 (POCA)<sup>49</sup>. Where the Commission has secured a criminal conviction in respect of an offence under the Act, it will use its powers under POCA and will work with other agencies to take appropriate action to ensure that the proceeds of gambling crime are confiscated. ~~The Commission will also bear in mind the possibility that some regulatory cases could meet the Assets Recovery Agency (ARA) referral criteria.~~
- 6.20** The Commission is already the supervisory body for the casino industry for the purposes of the money laundering rules and uses its powers under the Act to exchange information on proceeds of crime issues with the ~~Serious Organised~~ **National** Crime Agency and other law enforcement partners involved in taking action under the POCA.

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<sup>49</sup> The Commission's powers under POCA do not extend to Scotland.

## 7 Publicity

7.1 Openness and transparency are central to the Commission's work in upholding the licensing objectives. Publication of details of the Commission's work in licensing, compliance and enforcement plays an important role in improving compliance in and beyond the licensed community, and in increasing confidence in the Commission as a regulator.

### Publicity in relation to licensing and compliance

7.2 As part of its efforts to be more transparent, the Commission will publish a register of licensed operators. It will also publish details of applications which are under consideration, and those which have been refused or withdrawn.

7.3 In order to increase awareness of its compliance work in the licensed community and the wider public, the Commission will publish updates annually. Those updates will include information about a variety of matters, including the number of licence applications made and the number of ongoing compliance visits.

### General approach to publicity in enforcement cases

7.4 In making decisions on publicity in enforcement cases, the Commission will at all times bear in mind the public interest, as well as the rights of individuals to a fair hearing, and the right to privacy enshrined in Article 8 of the European Convention on Human Rights. This means that the Commission will limit the release of information about on-going criminal or regulatory investigations, only releasing details when it has determined it is in the public interest to do so. This protects the integrity of investigations and protects individuals or operators from being unfairly associated with unsubstantiated allegations.

7.5 This means that the Commission will only announce publicly that it is investigating a matter in exceptional circumstances; it will only make such an announcement if it considers it is desirable to:

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

7.6 In deciding whether to make an announcement, the Commission will consider the potential prejudice that it believes may be caused to any individuals or operators who are, or who are likely to be, a subject of the investigation.

7.7 The exceptional circumstances referred to above may arise where the matters under investigation have become the subject of public concern, speculation or rumour. In this case it may be desirable for the Commission to make public the fact of its investigation in order to allay concern, or contain the speculation or rumour.

7.8 The Commission will not normally publish details of the information found or conclusions reached during its investigations. In many cases, restrictions on the disclosure of information obtained by the Commission in the course of exercising its functions are likely to prevent publication. In exceptional circumstances, and where it is not prevented from doing so, the Commission may publish details. Circumstances in which it may do so include those where the fact that the Commission is investigating has been made public, by the Commission or otherwise, and the Commission subsequently concludes that the concerns that

## Appendix B: Amendments to the *Licensing, compliance and enforcement statement*

prompted the investigation were unwarranted. This is particularly so if the operator or individual under investigation wishes the Commission to clarify the matter.

### Regulatory enforcement

- 7.9 As noted above, while regulatory investigations including licence reviews are ongoing, the Commission will not ordinarily publicise that fact.
- 7.10 However, once a formal regulatory decision has been taken, such as the imposition of a financial penalty, the issuing of a warning, or the suspension or revocation of a licence, the Commission will ordinarily publish all such decisions in full, even if a decision is subject to review or appeal. Such publication will take place 14 days after a decision has been taken. Even if a voluntary settlement has been reached, such decisions will ordinarily be published.

### Criminal enforcement

- 7.11 The Commission will normally publicise the outcome of public hearings in criminal prosecutions.
- 7.12 When conducting a criminal investigation the Commission will generally consider making a public announcement when suspects are arrested, when search warrants are executed and when charges are laid. A public announcement may also be made at other stages of the investigation when this is considered appropriate.
- 7.13 The Commission will always be very careful to ensure that any publicity does not prejudice the fairness of any subsequent trial.

### Removal of notices

- 7.14 As stated above, publicity is important to ensure the transparency of the Commission's decision-making; it informs the public and helps to maximise the deterrent effect of enforcement action. Notwithstanding that, the Commission will upon request review any compliance or enforcement-related notices that are published on the Commission's website. The Commission will determine at that time whether continued publication is appropriate, or whether **such notices** should be removed or amended.
- 7.15 In carrying out its review the Commission will consider all relevant factors. In particular, the Commission will take into account:
- the seriousness of the misconduct
  - the nature of the action taken by the Commission and the level of any sanction imposed
  - whether the Commission has continuing concerns in respect of the operator and any risk they might pose to the licensing objectives
  - whether the publicity concerns an operator or an individual
  - whether the publication sets out the Commission's expectations regarding behaviour in a particular area
  - whether that message still has educative value and the public interest in the case (both at the time and subsequently)
  - whether continued publication is necessary for deterrence or consumer protection reasons
  - how much time has passed since publication
  - any representations made by the individual or operator on the continuing impact on them of the publication.

## Appendix C List of respondents to the consultation

A copy of non-confidential responses is available on our website.

Association of British Bookmakers (ABB)  
British Amusement Catering Trade Association (BACTA)  
Bingo Association  
Campaign for Fairer Gambling  
Carlton Clubs  
Gala Coral  
Gambling Business Group (GBG)  
George Eckton  
Fraser Brown  
Institute of Licensing  
National Casino Forum (NCF)  
Paddy Power  
Remote Gambling Association (RGA)  
Talarius

Gambling Commission March 2015

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### 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](http://www.gamblingcommission.gov.uk)

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

Gambling Commission  
Victoria Square House  
Victoria Square  
Birmingham B2 4BP

T 0121 230 6666  
F 0121 230 6720  
E [info@gamblingcommission.gov.uk](mailto:info@gamblingcommission.gov.uk)

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