

Changes to our enforcement strategy: putting the consumer first

**Consultation
January 2017**

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1 Introduction

Consumers are at the core of our approach to regulation and we expect operators to put them at the core of their businesses too. We exist within a consumer landscape. We want gambling consumers in Britain to have trust and confidence that:

- they will be well informed
- they will be treated fairly at all times
- they will be kept safe, in particular those who are vulnerable to the risks and reality of gambling-related harm
- they will get the best experience.

To reinforce the focus we place on consumers, we have recently made changes to our licence conditions and codes of practice. Our compliance work and enforcement action are having an impact, but the pace of change within the industry needs to quicken and we want to use our entire regulatory toolkit, including our approach to enforcement, to reinforce that.

Enforcement may not be the first place we go to ensure the needs of consumers are met, but, when necessary, it is a key lever that we have and we want to use it to best effect.

In this consultation we propose a new vision for our enforcement action which will guide how we use our powers. It emphasises our expectations that operators put consumers first, and sets out proposals for credible deterrence.

One of the principles in our existing *Statement for licensing and regulation* is a preference for pursuing compliance through settlement rather than formal licence review. We want to remove this bias in favour of settlement.

Regulation works well when regulators use the right tool for the job. We have a wide range of regulatory tools and we aim to use them appropriately and proportionately. Favouring settlements as a matter of course is not the right way to achieve that proportionality.

We propose to put access to all tools, including licence review (both of the operator and personal management licences), on an equal footing.

Additionally, we are proposing changes to our *Statement on financial penalties*. This includes higher penalties for breach, particularly where we see systemic and repeated failings. Our principles on penalties already reflect the need to remove profits from non-compliance, take account of costs and consumer harm, and deter poor compliance. We believe we should also have the ability to impose higher penalties if we do not see behaviour changing.

Settlement will continue to be a key tool for us in driving compliance. Where the facts are agreed, settlement can establish an efficient and effective way to determine an outcome and sanction, giving us scope to divert resources to focus on other priorities, and for the licensee to do the same. However, our experience shows that whilst settlements are an effective way of improving compliance, in practice, the process of arriving at these has been too drawn out. To create better incentives for early settlement, we propose introducing time-limited discounts.

2 Our approach to enforcement

Enforcement is one of our core functions. When we take enforcement action we aim to do so in a way which is consistent with the licensing objectives set out in the Gambling Act 2005. They are:

- preventing gambling from being a source of crime or disorder, being associated with crime or disorder, or being used to support crime
- ensuring gambling is conducted in a fair and open way
- protecting children and other vulnerable persons from being harmed or exploited by gambling.

Our approach to enforcement is currently set out in three key documents. They are:

- *Statement of principles for licensing and regulation*
- *Licensing, compliance and enforcement, policy statement*
- *Statement of principles for determining financial penalties.*

We have reviewed each of these in line with our intention to:

- place a renewed focus on consumers
- put access to all of our enforcement tools on the same footing
- emphasise to licensees the importance of timeliness and speed on their part during enforcement proceedings
- give credit, in the form of reduced financial penalties, where licensees cooperate and make early admissions
- treat repeat behaviour by licensees and within the industry, as a significant aggravating factor at the enforcement stage.

Within this consultation we have summarised the key changes we propose to each of the three documents. We have annexed to this consultation clean, amended versions of each of the documents.

We have also produced a new document, annexed to this consultation, called *Indicative sanctions guidance*, in which we set out a framework for decision making about regulatory enforcement and the sanctions that might follow.

3 Document 1: *Statement of principles for licensing and regulation (Annex 1)*

We are required to prepare, publish, and keep under review, a statement that sets out the principles which will govern the exercise of our functions, and, in particular, explains how those principles will assist us in pursuit of the licensing objectives.

In the statement we set out the principles that we apply when we exercise our functions under the Gambling Act 2005 (the Act) as amended by the Gambling (Licensing and Advertising) Act 2014. We use the statement to explain how we expect the principles to assist us in pursuit of the licensing objectives.

The proposed changes to the statement are:

- At paragraph 2.2, an amendment to our approach to regulating gambling in the public interest, emphasising that this specifically involves a concern for consumers as well as the general public (this is an amendment we have repeated throughout the four policy documents on which we are consulting).
- At paragraph 2.7, an amendment to the description of our approach to regulation from “minimum burden” to “avoiding unnecessary regulatory burdens”. This is an important distinction and whilst we will always be conscious of the need to avoid unnecessary burden for those we regulate, this must be balanced with the needs and interests of consumers.
- Rewording and retitling paragraph 2.13. Previously the wording of this section could have been read to imply that we have a responsibility for regulatory compliance as well as licensees. The new wording resets any ambiguity about our role.
- At paragraph 2.15 we have inserted reference to our new enforcement mission statement. It sets out our reinforced focus on protection of consumers and the general public and our intention to improve standards across the industry by:
 - driving a consumer-first culture
 - improving compliance with the licensing objectives
 - reducing gambling related harm
 - deterring operators from behaving in a way which is inconsistent with these goals.
- At paragraphs 4.5 and 4.6 we have introduced new wording which places the focus on the consumer, provides us with a discretion as to whether a licence review or a settlement is appropriate in any given case and removes any expectations that when considering enforcement, we will first look to settlement.
- Consistent with our refocused approach to using the full range of tools to enforce, we have amended the wording of the paragraphs under the heading “Regulatory settlement” to remove language which commits us to settlement.
- We have inserted a new paragraph at 4.10 to cover credit for timely disclosure.
- We have replaced all references to “voluntary settlement” within this and the other three documents with the term “regulatory settlement”. This more accurately describes the settlement process and outcome where this is linked to enforcement proceedings.

Question one

To what extent do you agree or disagree with our proposed amendments to the wording of paragraphs 4.5 and 4.6?

Strongly agree ☐

Agree ☐

Disagree ☐

Strongly disagree ☐

Neither agree nor disagree ☐

Do you have any other comments about our proposed changes to paragraphs 4.5 and 4.6?

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Question two

To what extent do you agree or disagree with our proposal to give credit for timely disclosure?

Strongly agree ☐

Agree ☐

Disagree ☐

Strongly disagree ☐

Neither agree nor disagree ☐

Do you have any other comments about this proposal?

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Question three

Do you have any other comments about our proposed amendments to our *Statement of principles for licensing and regulation*?

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4 Document 2: Licensing, compliance and enforcement under the Gambling Act 2005: policy statement (Annex 2)

Our policy statement on licensing, compliance and enforcement is to be read in conjunction with the statement; it builds on the statement by setting out our regulatory policies in relation to:

- assessing risk
- licensing operators and key personnel
- carrying out compliance activities
- regulatory and criminal enforcement.

The proposed changes to the policy statement are concentrated on chapter five. We have redrafted and reordered chapter five in line with our approach to regulatory enforcement, moving away from settlements as a matter of course, and returning to a position where we have discretion about how we approach any instance of non-compliance, be that through settlement or formal licence review.

The key changes we propose are as follows:

- Chapter five begins with our revised enforcement mission statement. We have reordered the chapter so that licence reviews now appear before settlements.
- Reference to regulatory settlement now follows on from the licence review section. We have amended the language to avoid creating an expectation on the part of a licensee that regulatory settlement will be preferred to a formal licence review.
- We have included a new heading titled “Credit for timely disclosure”. It sets out that credit may be given for timely disclosure and refers the reader to the *Statement of principles for determining financial penalties*.
- We have amended the passages on surrender of a licence (5.56 and 5.57) to make it clear that we may continue our investigations where a licensee surrenders a licence and also publicise our findings and actions.
- We have drafted guidance (5.60) on revocation of approval for test houses. This covers situations where there are repeated failings by an approved test house to prevent non-compliant products entering the market.

Question four

Do you have any other comments about our proposed changes to the policy statement?

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5 Document 3: Statement of principles for determining financial penalties (Annex 3)

In the *Statement of principles for determining financial penalties*, we set out the principles that we apply and consider when we use our powers to require the holder of an operating licence or the holder of a personal licence to pay a financial penalty.

Our approach to financial penalties has been to avoid establishing a fixed formula for setting them. This can lead to a situation in which licensees weigh-up the likely cost of any breach and act accordingly. Instead, we want any penalty to reflect the facts and circumstances of the breach with which we are dealing.

Drawing on the lessons we have learned from our caseload over the past few years, we are now in a position to expand the factors which we will take into account when determining any financial penalty. In particular, we have seen the benefit of early and voluntary reporting of breaches by licensees and in contrast, the cost to resources and finances when licensees do not cooperate.

As a proportionate and risk-based regulator, we believe it is only fair that repeat offenders should pay a heavier penalty for their failure to learn and change. Conversely, we want to offer a discount to the penalty element of a fine where licensees have made early disclosure, made admissions, and cooperated with our investigations.

The key changes we propose to the *Statement of principles for determining financial penalties* are as follows:

- We have given paragraph 1.6 a header, “Key considerations”. This is to emphasise that the factors listed are of particular relevance to the decision to impose a financial penalty.
- At paragraph 2.5 onwards we set out the proposed criteria for determining the amount of a financial penalty.
- At paragraph 2.6 we set out the two elements of a financial penalty, firstly the removal of the detriment to customers/gain made, and secondly the penal element.
- At paragraph 2.7 we set out an approach to calculating a financial penalty. This is intended to provide licensees, stakeholders and us with a clear point of reference for calculation but without, for the reasons set out above, hindering our discretion on the amount.
- At paragraph 2.8 we set out the factors we will consider in determining an appropriate financial penalty.
- At paragraph 2.9 we have included a new section on discount to a financial penalty. As with the amount of any financial penalty, we do not want to use a specific formula to calculate discount but to make a determination based on the facts of the case.

Where we impose financial penalties, we want to develop some clearer principles about the use of monies from financial settlement. These are usually paid to a general fund but do not have to be where they are part of an early settlement. We currently have some broad principles to deal with the use of the financial element of an early settlement. Based on our experiences of the past few years, we want to expand these so that there is greater clarity about the use and purpose of financial settlements.

We will continue to reserve the power to approve the destination of monies paid as part of a regulatory settlement. Where we make decisions about this, we propose to rely on the following principles:

- operators must not generate positive publicity from the settlement
- payments should be demonstrably over and above 'normal' RET contributions
- where practicable, operators should return money to any identified victims
- if victims cannot be identified or there are no victims, the monies should be given to charity for socially responsible purposes
- socially responsible purposes would include purposes which address gambling-related harm or in some way promotes one or more of the licensing objectives
- where payments are made with the aim of addressing gambling-related harm, the presumption is that the money would be paid to GambleAware (formerly Responsible Gambling Trust) to be used for specific agreed purposes that accelerate their commissioning plans
- operators should have no interest in organisations who will receive divested funds
- there should be meaningful evaluation by operators of the effectiveness of projects or research funded by a specific regulatory settlements
- research findings must be made public to help raise standards
- clear timeframes should be set for payment of monies and for delivery of work paid for from those monies.

Question five

To what extent do you agree or disagree with our proposed amendments to paragraph 2.6 of the *Statement of Principles for determining financial penalties* and the criteria for determining amount?

Strongly agree ☐

Agree ☐

Disagree ☐

Strongly disagree ☐

Neither agree nor disagree ☐

Do you have any other comments about this proposal?

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**A version of this form in Word is available to
download on the consultation page**

Do you have any other comments about our proposed changes to paragraph 2.6 and the criteria for determining amount?

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Question six

To what extent do you agree or disagree with our proposed amendments to paragraph 2.8 of the *Statement of principles* and the approach to calculating a financial penalty?

Strongly agree	<input type="checkbox"/>
Agree	<input type="checkbox"/>
Disagree	<input type="checkbox"/>
Strongly disagree	<input type="checkbox"/>
Neither agree nor disagree	<input type="checkbox"/>

Do you have any other comments about this proposal?

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Do you have any other comments about our proposed changes to paragraph 2.8 and the approach to calculating a financial penalty?

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Question seven

To what extent do you agree or disagree with our proposed amendments to paragraph 2.9 of the *Statement of principles* and the factors to be taken into account when calculating a financial penalty?

Strongly agree	<input type="checkbox"/>
Agree	<input type="checkbox"/>
Disagree	<input type="checkbox"/>
Strongly disagree	<input type="checkbox"/>
Neither agree nor disagree	<input type="checkbox"/>

Do you have any other comments about this proposal?

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Do you have any other comments about our proposed changes to paragraph 2.9 and the factors to be taken into account when calculating a financial penalty?

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Question eight

To what extent do you agree or disagree with our proposal to allow a discount to a financial penalty in certain circumstances?

Strongly agree ☐

Agree ☐

Disagree ☐

Strongly disagree ☐

Neither agree nor disagree ☐

Do you have any other comments about this proposal?

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Do you have any other comments about our proposal to allow a discount to a financial penalty in certain circumstances?

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Question nine

To what extent do you agree or disagree with our proposals to expand the principles we will apply to deciding how monies from early settlement will be used?

Strongly agree ☐

Agree ☐

Disagree ☐

Strongly disagree ☐

Neither agree nor disagree ☐

Do you have any other comments about this proposal?

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Do you have any other comments about our proposals to expand these principles?

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Question ten:

Do you have any other comments about our proposed changes to the *Statement of principles on financial penalties*?

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6 Document 4: *Indicative sanctions guidance* (Annex 4)

The purpose of this document is to set out how decision makers (usually the Regulatory panel or our employees) approach regulatory sanctions following a licence review. The guidance sets out a framework for decision-making about regulatory enforcement and what the appropriate sanction might be.

The key content is as follows:

- At chapter two we set out the various options open to decision makers after a review.
- At paragraph 2.13, addressing warnings, we want to make it clear that where behaviour is repeated it is highly unlikely that a further warning will be issued on a subsequent occasion.
- At paragraph 2.18 we set out the factors that may tend towards the imposition of a financial penalty. These have been imported from the statement of principles on financial penalties and provide consistency across the two documents.

Question eleven

To what extent do you agree or disagree with our proposed amendments to the guidance on regulatory decision making after a licence review?

Strongly agree ☐

Agree ☐

Disagree ☐

Strongly disagree ☐

Neither agree nor disagree ☐

Do you have any other comments about this proposal?

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Do you have any other comments about our proposed amendments to the Guidance on regulatory decision making after a review?

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Annex 1

**GAMBLING
COMMISSION**

Statement of principles for licensing and regulation

[MONTH AND YEAR]

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 (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 Lottery¹. Information about how the Commission regulates the National Lottery can be found on our website.

The licensing objectives

- 1.3** The licensing objectives are set out in the Act 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 gambling².

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 objectives³.

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' Code⁴
 - report of the Hampton Review⁵
 - report of the Macrory Review⁶
 - Cabinet Office Consultation Principles⁷
 - Scottish Improving Regulation Report⁸
 - reports of the Regulatory Review Group in Scotland⁹
 - Hampton Implementation Review Report into the Gambling Commission¹⁰
 - Overcoming cultural barriers to information sharing within regulatory services¹¹
- 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.

¹ The Commission 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.

² Section 1 Gambling Act 2005

³ Section 22 Gambling Act 2005

⁴ The Regulators' Code (July 2013) which came into force in April 2014

⁵ Reducing Administrative Burdens: Effective Inspection and Enforcement, Philip Hampton, March 2005

⁶ Regulatory Justice: Making Sanctions Effective, Professor Richard B. Macrory, November 2006

⁷ Consultation Principles, Cabinet Office, January 2016

⁸ The Scottish Improving Regulation Report 2008, July 2008

⁹ Interim Report from the Regulatory Review Group for the Scottish Group, February 2008; Regulatory Review Group Annual Report, July 2008

¹⁰ Gambling Commission: A Hampton Implementation Review Report, April 2009

¹¹ Overcoming cultural barriers to information sharing within regulatory services, Centre of Excellence for Information Sharing, July 2016

The Commission's jurisdiction

- 1.8** The Commission's jurisdiction under the Act covers Great Britain: England, Scotland and Wales¹². However, the Commission's jurisdiction is broader where remote gambling is concerned and will also cover those supplying gambling from remote gambling equipment situated in Great Britain to those outside of Great Britain, as well as remote operators contracting with consumers 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 conditions to be attached to such licences (both general and individual), limit the duration of such licences¹³, and determine applications to vary or renew operating and personal licences
 - undertake activities for the purpose of assessing compliance with the Act, with any licence condition, code of practice, or other provision made by or by virtue of the Act, and further undertake activities for the purpose of assessing whether an offence contrary to the Act has been committed (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), and to void a bet and require repayment of any money paid in relation to it
 - to investigate and prosecute offences committed under the Act¹⁴.

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*
 - *Indicative sanctions guidance*
 - *Regulatory panel procedures and guidance.*

¹² The Commission's jurisdiction also extends to Northern Ireland under section 5 of the Gambling (Licensing and Advertising) Act 2014 in respect of the offence of advertising unlicensed remote gambling: Northern Ireland

¹³ 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.

¹⁴ 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.

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 the Regulators' Code in a supportive, straightforward, risk-based, and transparent manner.

Regulating gambling in the public interest

- 2.2** The Commission regulates gambling in the interests of consumers and the general public, 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 consumers and the general 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 Consultation Principles¹⁵ 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-based¹⁶, 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 Commission¹⁷, so that decisions of similar complexity and impact are generally made at similar levels within the Commission.

¹⁵ Consultation Principles, Cabinet Office, January 2016

¹⁶ 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.

¹⁷ 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 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.

Supporting the licensing objectives in the least restrictive way

- 2.7** The Commission will ensure that its regulatory approach does not impose unnecessary regulatory burdens in upholding the licensing objectives in the Act, and does not unduly hinder the economic progress of licensees.

Requests for information

- 2.8** The Commission will request only that information which it requires¹⁸ and will avoid duplicating requests by seeking to obtain information from government bodies (for example, the National Crime Agency) and other regulators (for example, the Office of Communications, the Financial 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 as limited a regulatory burden as is compatible with the protection of consumers, the protection of the general public, and the upholding of the licensing objectives.

Assisting in compliance

- 2.13** The Commission will seek to support licensees in meeting their responsibilities through the provision of clear information, guidance and advice. However, the onus of responsibility for regulatory compliance is at all times on the licensee.

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.

Aim of regulatory enforcement

- 2.15** Through our regulatory enforcement activity, we aim to protect consumers and the general public, and to raise standards in the gambling industry through targeted actions that:
- drive a culture where operators put consumers first
 - improve compliance with the licensing objectives
 - reduce gambling-related harm
 - deter operators from acting in the same way.

¹⁸ 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.

Sharing information

- 2.16** The Commission will share information with other bodies where it is legally required to do so, and also where it considers it necessary to do so. This may, where legally permitted, include the sharing of data with relevant public authorities, overseas regulators, and law enforcement agencies in order to help the Commission perform its regulatory functions.

Enforcement of gambling contracts

- 2.17** The Commission expects parties to gambling contracts to 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

- 2.18** The Commission will treat complaints about its work seriously and will address them in accordance with its published procedures¹⁹.

3 Principles for licensing

Introduction

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

Licence 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.

¹⁹ See in particular Appendix 12 of the Gambling Commission Corporate Governance Framework.

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 when considering a licence application.
- 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 functions²⁰.

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 consumers 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.
- 3.9** The Commission will not issue licences to people who do not need them. If a licence is issued but an operator or individual 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.

Protecting the licensing objectives

- 3.11** 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

- 3.12** The Commission will hold an operator's 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 roles²¹ if the licence application is granted.

Separation of operational and compliance responsibilities

- 3.13** 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.

²⁰ 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.

²¹ The roles include the specified management offices listed in current licence condition 1.2.1.

Failure to declare convictions

- 3.14** The Commission will attach significant weight to failure by a licence applicant to declare a conviction for a relevant offence²² 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

- 3.15** 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 licences²³ having regard to the nature and seriousness of the offence and the time which has elapsed since the offence was committed.

The opportunity to make oral representations

- 3.16** The Commission will provide an opportunity for licence applicants to make oral representations in appropriate circumstances²⁴.

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 lottery²⁵.

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.

²² A relevant offence is one listed in Schedule 7 to the Act, or certain equivalent foreign offences: see section 126(2)

²³ 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.

²⁴ 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.

²⁵ 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 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 consumers and treat them fairly
 - have due regard to the information needs of consumers 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
 - comply with both the letter and spirit of their licence and associated Commission regulations
 - 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 consumers and treat them fairly
 - have due regard to the information needs of consumers 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
 - comply with both the letter and spirit of their licence, the licence of their operator, and associated Commission regulations.

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 consumers 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.

Dealing with issues that put the licensing objectives at risk

- 4.5 In approaching matters that put the licensing objectives at risk, the Commission's concern is to protect consumers and the general public, and to raise standards in the gambling industry through targeted actions that drive a culture where operators put consumers first, improves compliance with the licensing objectives, reduces gambling-related harm, and deters operators from acting in the same way.

Licence reviews

- 4.6 Where concerns have been raised about a licensee the Commission may commence an investigation. At any time the Commission may move to formally review a licence by virtue of its powers under section 116 of the Act. Where a formal review has been carried out, the Commission may go on to exercise its regulatory powers under section 117 of the Act.

Regulatory settlement

- 4.7 In certain, limited, circumstances the Commission may 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 regulatory settlement, which the Commission may consider where a licensee is:
- open and transparent in its dealings with the Commission
 - able to make timely disclosures of material facts to 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 agree to the publication of a public statement by the Commission setting out the failings in order to deter 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 follow advice and implement procedures to ensure there is no repetition of failings
 - prepared to contribute to the direct costs to the Commission of investigating the matter in respect of which regulatory 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*.
- 4.8 Where a formal review has started but a licensee makes full disclosure of all the relevant facts and makes appropriate admissions, the Commission may consider if its investigations need to continue. At this point the Commission may consider whether it is prepared to agree the facts and an appropriate outcome, or in certain cases what action short of the equivalent of a formal sanction should be taken.
- 4.9 Regulatory settlements can allow the Commission to avoid a formal licence review or to conclude such a review more swiftly than would often be the case but will only be appropriate where they meet the same appropriate regulatory outcome as a formal licence review. A decision to settle early should not be seen as a soft option. The Commission will set clear and challenging timetables for settlement discussions. Where timetables are not adhered to the Commission is likely to revert to a formal licence review.

Credit for timely disclosure

- 4.10** The earlier that disclosure of all relevant facts and appropriate admissions are made during the investigation process, the more credit will be given to the licensee for making such disclosure. This will be so whether the Commission has commenced a formal licence review or not. In certain appropriate cases in which the Commission is considering a financial penalty, and in which timely disclosure and admissions have been made by a licensee, the Commission will seek to give a discount to the penal aspect of a financial penalty for this in accordance with the Statement of Principles for Determining Financial Penalties.

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.

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 with any other offences related to gambling (for example, money laundering offences under the Proceeds of Crime Act 2002 and illegal money lending). It will do so in conjunction with other bodies and/or other regulators as necessary.
- 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 consumers. 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.

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 while its investigations are ongoing. 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** However, the Commission will normally publish details of all formal regulatory action taken under section 117 of the Act, which may include reference to conclusions reached during the course of an investigation in the form of a public statement. 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. Publications will also normally accompany a regulatory settlement.
- 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 may, 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. 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 companies²⁶ 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.

²⁶ Within the meaning of section 422 of the Financial Services and Markets Act 2000

- 5.9** In relation to the prevention, investigation, and prosecution²⁷ 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.
- 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 conducted/provided, 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 readily available by operators to consumers 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 seek to 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 in relation to 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.

²⁷ 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.

- 5.20** The Commission will ensure that the investigation and prosecution²⁸ of offences under the Act, including the offence of cheating under section 42 of the Act, are prioritised by reference to the level of risk posed to the licensing objectives and the impact on consumers.

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 managed 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.
- 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 Committee of Advertising Practice (CAP) and the Broadcasting Committee of Advertising Practice (BCAP) to develop advertising codes on gambling and will ensure that these are backed by effective enforcement action if those codes are breached.
- 5.25** 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.
- 5.26** With regard to ‘vulnerable persons’, whilst the following list is not exhaustive, the Commission considers that this group will include:
- people who 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 health problems, learning disability, or substance misuse relating to alcohol or drugs.
- 5.27** 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.
- 5.28** The Commission will issue codes that include social responsibility requirements, setting out 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.
- 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 secure regular prevalence data on gambling participation and problematic gambling behaviour.

²⁸ 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.

- 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 approach²⁹. 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.
- 5.33** The Commission will also give priority to the investigation and prosecution³⁰ 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 and the impact on consumers.
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Keeping gambling fair and safe for all

www.gamblingcommission.gov.uk

²⁹ For an example from another regulator see: www.hse.gov.uk/aboutus/meetings/committees/ilgra/pppa.htm

³⁰ 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.

Annex 2

GAMBLING COMMISSION

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

[MONTH AND YEAR]

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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 (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 Lottery¹. 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 on our website.

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 our website.

Purpose of this document

- 1.6** This 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
 - regulatory and criminal enforcement.

¹ The Commission 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.

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*
- *Indicative sanctions guidance*
- *Regulatory panel procedures.*

These are available on our website.

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 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 operator's 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 be informed by specific information upon which the risk assessment will be based.
- 2.5** The risks related to suitability of the licence holder include:
- staff and management integrity and competence
 - controller² 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.

² Within the meaning of section 422 of the Financial Services and Markets Act 2000

Identifying risk

- 2.8** With any aspect of regulatory engagement (licensing, compliance etc), 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 involving 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).

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 will identify the risk categories and the information necessary to inform them. The information that will be sought as to likelihood of risk may include how compliant an operator is, or is likely to be, with the requirements of the Act and the LCCP. It will also include organisational matters such as accountability and governance, the competence and integrity of staff, and the effectiveness of policies and procedures designed to minimise the 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.
- 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. 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 identified staff) for certain 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.
- 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 those 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 our website.
- 3.3 Personal licences are required by those performing a specified management or operational function. The categories of people who need a personal licence 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 offices³.
- 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 of 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 form⁴.

³ The Commission recognises that in exceptional circumstances this may be impractical, in which case the Commission may agree an exception should be made.

⁴ Operating Licence Application Forms Guidance Notes and the Personal Licence Application Forms Guidance Notes (as amended from time to time).

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

- Disclosure and Barring Service (DBS) and Disclosure Scotland
- court records
- Company Watch
- Companies House
- Dun & Bradstreet
- Equifax
- Financial Conduct Authority
- HMRC
- The Insolvency Service
- The Solicitors Regulation Authority
- The Law Society of Scotland
- National Crime Agency
- sports governing bodies
- open source internet searches
- other regulators in the UK and abroad
- 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 we have available. 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 regulations⁵.

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 and/or person(s) relevant to the application, past and present,. 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 person(s) relevant to the application.
- **Criminality** – criminal record of the applicant and/or person(s) relevant to the application.

⁵ The Gambling Act 2005 (Definition of Small-scale Operator) Regulations 2006

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 address 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 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: 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 and will categorise the application in one of the four following ways:

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 Act⁶ 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 offence⁷.

⁶ Section 71 Gambling Act 2005

⁷ Section 126(2) and Schedule 7 Gambling Act 2005

- 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 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 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 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 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.⁸ 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 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.

⁸ Section 125 Gambling Act 2005

- 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 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. This will involve consideration of the facts and circumstances of the offence, including the individual's explanation and any further information, 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:
- 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 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 applicant's 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'.

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 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 register⁹ 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. Licensees should also be aware of the changes and matters they must keep the Commission informed of whilst they are the holder of a licence¹⁰.
- 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 licence¹¹. 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.¹² 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.

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, both in letter and spirit. This chapter of the document outlines the manner in which the Commission will carry out its compliance activities.

Test houses

- 4.2** The Commission requires licensees to ensure that their gambling products have been tested by a test house before they are released to the market, where applicable. The Commission have published a list of test houses that are approved¹³ to test compliance against our technical standards and requirements including:
- gaming machines technical standards
 - remote gambling and software technical standards
 - bingo and casino technical requirements.

⁹ The Commission maintains a register of operating licences relating to each licence under the provisions of Section 106 of the Act

¹⁰ Licence Conditions and Codes of Practice (as amended from time to time).

¹¹ The Gambling (Operating Licence and Single-Machine Permit Fees) Regulations 2006 (as amended)

¹² The Gambling (Personal Licence Fees) Regulations 2006 (as amended)

¹³ This list can be found on our website: [Test houses](#)

Advice and assessment

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

The purpose of assessments

- 4.5** The purpose of an assessment 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.
- 4.6** Assessments, which may include visits, will be used proportionately as the Commission will seek to target those areas of greatest risk to the licensing objectives.
- 4.7** Assessments 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

- 4.8** 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

- 4.9** The frequency and focus of assessments, 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

- 4.10** The Commission will:
- act reasonably in discharging its powers under the Act and conducting assessments
 - 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

- 4.11** 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.
- 4.12** 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)

- 4.13** 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

- 4.14** 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

- 4.15** 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 must be carried out. Failure to make the changes required may lead to the Commission taking enforcement action against the licensee.

Complaints about licensees

- 4.16** 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 website.

Risk assessment and proportionality

- 4.17** 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

4.18 As part of its compliance activities, the Commission will:

- assess and evaluate compliance consistently and in accordance with the Commission's 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.

4.19 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

4.20 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 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

4.21 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 Regulatory enforcement

5.1 Through our regulatory enforcement activity, the Commission aims to protect consumers and the general public, and to raise standards in the gambling industry through targeted actions that:

- drive a culture where operators put consumers first
- improve compliance with the licensing objectives
- reduce gambling-related harm
- deter operators from acting in the same way.

5.2 The Commission's role is to uphold the licensing objectives set out in the Act. There are a variety of ways that the Commission can deal with non-compliance by licensees, ranging from enhanced compliance procedures and regulatory settlements to licence reviews and formal enforcement action. The Commission also has powers to launch criminal investigations and bring criminal proceedings against companies and individuals. Enforcement forms an essential part of the Commission's work to keep gambling fair and safe for all.

Formal enforcement

5.3 The Commission's effective and proportionate use of its enforcement powers plays an important role in the pursuit of the licensing objectives. Enforcement activity contributes to the protection of consumers and the general public and to serves to deter future contraventions of the Act and other applicable requirements. It can also be a particularly effective way, through the 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?

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

5.5 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.

- 5.6** Section 116(2) of the Act gives the Commission the power to review any matter relating to a 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 licensed activities, has been convicted of a relevant offence in Great Britain or abroad
 - for any reason:
 - suspects that the licence holder may be unsuitable to perform the licensed activities
 - thinks that a review would be appropriate.
- 5.7** A review can be carried out even if there is no suspicion as to 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, for example, it is part of a sampling exercise to enable the Commission to maintain a good understanding of the industry, or whether it is a potentially licence-threatening concern. 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

- 5.8** 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.

Commencing a review of an individual licence

- 5.9** 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.
- 5.10** 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 will be undertaking a licence review, as opposed to a criminal investigation. However, in such cases, if further incriminating information comes to light, the Commission may commence a criminal investigation. If the Commission considers that a criminal investigation is required it will notify the licensee of that fact.
- 5.11** 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. They will further be reminded that it is an offence to give to the Commission information which is false or misleading without reasonable excuse in connection with a licence review under section 342 of the Act.

Initial meeting

- 5.12** The Commission may, prior to or during a licence review, hold an initial meeting with the licensee to clarify the issues, and to establish what information will be required by the Commission during the course of its review. However, in many cases, such an initial meeting will be unnecessary because the issues will be sufficiently clear.

Interviews

- 5.13** 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. 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.
- 5.14** 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

- 5.15** Following an investigation, the Commission will send a preliminary findings letter to the licensee.
- 5.16** The letter and documents which accompany it will contain details of:
- the preliminary 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.
- 5.17** The preliminary findings letter will also normally set out the details of the documents and any other evidence on which the Commission relies, and details of any documents which might be said to undermine the Commission's case or assist that of the licensee.
- 5.18** The letter will remind the licensee of their right to make representations as to both the preliminary findings and the preliminary assessment of seriousness, and set out the procedure and the timetable for those representations to be made. Licensees will normally be given 28 days to make representations, but there may be occasions when a shorter period is appropriate.
- 5.19** 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.

Notification of the outcome of the review

- 5.20** Following the consideration of the licensee's representations, or if no representations are received within the specific period, the Commission will send a further notice setting out the settled findings of the review, and the outcome of the review. If the Commission is minded to impose a financial penalty the licensee will be given a further opportunity to make representations to the Commission about the proposed penalty. The licensee will be informed within this letter that they may accept the outcome of the review or refer the matter, both the findings and the proposed sanction, to a Regulatory Panel for determination.

- 5.21** Cases which due to their scale, complexity, or novelty, or are of strategic importance to the Commission will be referred to a Regulatory Panel by the Commission for determination.

The Commission's regulatory powers

- 5.22** 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
- decide to exercise its powers set out in section 117 of the Act to:
 - give the licensee a warning
 - add, remove, or amend a condition to the licence
 - suspend a licence
 - revoke a licence
 - impose a financial penalty.

- 5.23** The powers under section 117 of the Gambling Act 2005 are not mutually exclusive and may, if appropriate, be exercised in combination.

Financial penalties

- 5.24** 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).

- 5.25** 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. The Commission's Statement of Principles for Determining Financial Penalties can be found on the Commission's website.

- 5.26** Before imposing a financial penalty the Commission will notify a licensee in writing of its intention to impose a financial penalty, the amount of the proposed penalty, the reasons for imposing such a penalty, and giving opportunity for the licensee to make representations. Licensees will normally be given 28 days to make representations, but there may be occasions when a shorter period is appropriate.

Suspension at the outset or during a review

- 5.27** The Commission has the power to suspend a licence on deciding to conduct a review 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.

Suspension or revocation of a licence following a review

- 5.28** 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.

Regulatory settlement

- 5.29** Where concerns have been raised about a licensee the Commission may commence an investigation. Where appropriate, in certain specific cases, the Commission may seek to fulfil its statutory obligations and pursue the licensing objectives through means that stop short of a completed formal licence review under section 116 of the Act. One means for achieving this will be by way of regulatory settlement, which the Commission will consider where a licensee is:
- open and transparent in its dealings with the Commission
 - able to make timely disclosure of material facts to the Commission
 - able to demonstrate that they have insight into the apparent failings
 - able to suggest actions that would prevent the need for formal action by the Commission
 - prepared, where appropriate, to agree to the publication of a public statement by the Commission setting out the failings in order to deter 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 costs savings which accrued as a result of the failings
 - prepared to follow advice and implement procedures to ensure there is no repetition
 - prepared to contribute to the direct costs to the Commission of investigating the matter in respect of which the regulatory 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.
- 5.30** Even where a formal review has started but a licensee makes admissions and full disclosure of all the relevant facts, the Commission may consider if the review needs to continue, or whether it is prepared to agree the findings and the nature of the sanction (if any) which would be appropriate, or in appropriate cases what action short of the equivalent of a formal sanction should be taken. The Commission is keen to encourage licensees to come forward and make full disclosure of all the relevant facts relating to a matter and propose actions which would make imposing formal sanctions unnecessary at as early a stage as possible.
- 5.31** The Commission will set clear and challenging timetables for settlement discussions to ensure that they result in a prompt outcome. Where timetables are not adhered to the Commission is likely to commence or continue a formal licence review, as applicable.
- 5.32** Regulatory settlements in the Commission context are not the same as ‘out of court’ settlements in the commercial context. A regulatory settlement is a regulatory decision, taken by the Commission, the terms of which are accepted by the licensee concerned. 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 a licensee’s misconduct, or to relieve licensees of the profits or gross gambling yield resulting from their failures. In almost all circumstances, regulatory settlements will result in some degree of publicity (see chapter 7), unlike commercial out of court settlements, which are often confidential.
- 5.33** The Commission will not normally initiate the regulatory settlement process, but may 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.

- 5.34** While regulatory settlement is an important part 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.
- 5.35** In deciding whether regulatory settlement 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 consumers
 - the absence of internal controls or procedures intended to deal with the particular concern
 - the way in which concerns were reported to the Commission.
 - whether the licensee has taken into account any applicable learning or guidelines published by the Gambling Commission.
- 5.36** In those cases where enforcement action is not taken and/or a formal review is not commenced, the Commission will expect the licensee to act promptly to take the necessary remedial action agreed to deal with the Commission's concerns. If the licensee does not do this, the Commission may take enforcement action in respect of the original contravention.
- 5.37** On the website we may give examples of where we have 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.

Credit for timely disclosure

- 5.38** The earlier that disclosure is made during the investigation process, the more credit will be given to the licensee for making such disclosure. This will be so whether the Commission has commenced a formal licence review or not. In certain appropriate cases in which the Commission is considering a financial penalty, either at the conclusion of a formal review or as part of a regulatory settlement, and in which timely disclosure and admissions have been made by a licensee, the Commission will seek to give credit for this in accordance with the *Statement of principles for determining financial penalties*.

Assessing suitability

- 5.39** 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).
- 5.40** This means that the Commission will consider, amongst other things, a licensee's integrity (which includes an assessment of their 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).

5.41 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.

5.42 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

5.43 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.

5.44 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 a regulatory settlement.

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

What other regulatory powers does the Commission have?

5.46 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

5.47 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). It must, however, give the licensee an opportunity to make representations as to the financial penalty.

5.48 As indicated above, the Commission has prepared a *Statement of principles for determining financial penalties* which can be found on our website.

Voiding bets

5.49 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.

- 5.50** 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 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.
- 5.51** 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.
- 5.52** 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.
- 5.53** 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.
- 5.54** 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.
- 5.55** 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

- 5.56** 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.
- 5.57** 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. The Commission may also publicise the case where appropriate.

Lapse

- 5.58** 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 considering medical advice about the licensee.

Revocation for non-payment of annual fee

- 5.59** Failure to pay annual fees by the fee due date 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.

Revocation of test house approval

- 5.60** In circumstances in which the Commission becomes concerned about non-compliant gambling products entering the market, especially if this is a repeat concern, it may investigate the product, the operator responsible for its appearance on the market, the personal licence holders responsible for the actions of the operator, and the test houses that have approved non-compliant products. Aside from enforcement action the Commission may take against licence holders, it may also revoke the approval of a test house responsible for testing the product before its release on the market.

6 Criminal enforcement

- 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 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 personal licence holder 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.

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](#) 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 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 offences are committed.

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.
- 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)¹⁴. 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.
- 6.20** The Commission is already the supervisory body for the casino industry for the purposes of the money laundering regulations and uses its powers under the Act to exchange information on proceeds of crime issues with the National Crime Agency and other law enforcement partners involved in taking action under the POCA.

¹⁴ 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 compliance visits undertaken.

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 any speculation or rumour.
- 7.8** The Commission will not normally publish details of the information found or conclusions reached during its investigations while they are ongoing. 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 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, the suspension or revocation of a licence, or the agreement of a regulatory settlement 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.

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 failures
 - 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 or individual 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.

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Annex 3

**GAMBLING
COMMISSION**

Statement of principles for determining financial penalties

[DATE AND YEAR]

1 Introduction

The purpose of this statement of principles for determining financial penalties

- 1.1** This statement sets out the principles that the Gambling Commission (the Commission) will apply and have regard to in exercising its powers to require the holder of an operating licence or the holder of a personal licence to pay a financial penalty.
- 1.2** This statement of principles applies both to circumstances in which the Commission exercises its powers to impose a financial penalty under section 121 of the Gambling Act 2005 (the Act), or when the Commission is considering the matter of a payment in lieu of a financial penalty as part of a regulatory settlement with a licensee. Therefore references to financial penalties within this document should also be read to include payments in lieu of financial penalties.

The framework of policies and procedures

- 1.3** The Commission has developed a number of policies which govern how it carries out its statutory functions. As such this needs to be read in conjunction with the following documents:
- *Statement of principles for licensing and regulation*
 - *Licensing, compliance and enforcement policy statement*
 - *Licence conditions and codes of practice*
 - *Complaints procedure*
 - *Corporate governance framework*
 - *Indicative sanctions guidance*
 - *Regulatory panel procedures.*

The legal framework

- 1.4** Section 121 of the Gambling Act 2005 provides that the Commission may require the holder of an operating licence to pay a penalty if the Commission thinks that a condition of the licence has been breached. The Commission may impose a financial penalty following a review under section 116(1) or (2) of the Act. The Commission also has the power to impose a financial penalty without carrying out a licence review. Once a financial penalty has been imposed the Commission pays received monies into a Consolidated Fund, once it has deducted its costs and a reasonable share of its expenditure, as set out at section 121(5)(c).

The scope of this document

- 1.5** Section 121(6) of the Act requires the Commission to, among other things, prepare a statement setting out the principles to be applied by decision makers in exercising the Commission's powers to impose financial penalties, and to have regard to the statement when exercising a power under this section. The Commission shall review this statement of principles from time to time and revise it when it thinks necessary.

Key considerations

- 1.6** In exercising its powers to impose a financial penalty the Commission will have particular regard to:
- the seriousness of the breach of condition in respect of which the penalty is proposed
 - whether or not the licensee knew or ought to have known of the breach
 - whether the breach is an example of repeat behaviour by the licensee
 - whether the breach arose in circumstances that were similar to previous cases the Commission has dealt with which resulted in the publication of lessons to be learned for the wider industry
 - the nature of the licensee (including, in particular, the licensee's financial resources)
 - the timeliness of any admissions made by the licensee and actions taken to remediate the breach.

2 Applicable principles

The purpose of imposing a financial penalty

- 2.1** The primary purpose of the Commission's exercise of its regulatory powers is to protect the interests of consumers and the general public and uphold the licencing objectives. This may, indirectly, have a punitive effect on the licensee. The primary aims of financial penalties will be to:
- change the behaviour of the licensee
 - eliminate any financial gain or benefit from non-compliance with licence conditions
 - be proportionate to the nature of the breach of licence condition and the harm caused
 - aim to deter future non-compliance, both on the part of the licensee and other operators.

Criteria for the imposition of a financial penalty

- 2.2** By virtue of section 121(7), in considering the imposition of a penalty, the Commission must have regard to:
- the seriousness of the breach of the licence condition in respect of which the penalty is proposed
 - whether the licensee knew or ought to have known of the breach
 - the nature of the licensee (including, in particular, the licensee's financial resources).
- 2.3** A financial penalty may be appropriate in the following circumstances (the list is not exhaustive):
- where the breach of a licence condition was committed intentionally or recklessly,
 - where the breach could have been prevented by the licensee
 - the licensee was aware or should have been aware of the breach
 - repeated breach of a licence condition
 - systemic failure to comply with a condition of the licence
 - where the breach gave rise to financial gain for the licensee
 - where the breach of a licence condition had an impact on consumers
 - where the breach of a licence condition may have damaged confidence in the gambling industry
 - where the licensee did not report the breach of a licence condition
 - where there is a lack of effective remedial action after the breach or failure becomes apparent to the licensee
 - where a financial penalty is necessary to deter future contraventions or failures and to encourage compliance
- 2.4** A financial penalty will normally be used in the following circumstances (the list is not exhaustive):
- if the breach of a licence condition was minor in nature
 - if the breach, or possibility of a breach of a licence condition, would not have been likely to be apparent to a diligent licensee
 - if the Commission considers that other regulatory action is more appropriate.

Criteria for determining the amount of a financial penalty

- 2.5** Although the Act does not set a limit for a financial penalty, a penalty will be set at a level which the Commission considers to be proportionate to the breach. It will take into account the financial situation of the licensee where this information is provided to the Commission. A financial penalty allows the Commission, amongst other things, to eliminate any financial gain or benefit from non-compliance.

- 2.6** The total amount payable by a licensee will normally be made up of two elements:
- i. removal of the detriment suffered by consumers and/or any gain made by the licensee as a result of the contravention or failure (where these can reasonably be calculated or estimated)
 - ii. an amount that reflects the seriousness of the contravention or failure and the need for deterrence (the 'penal element')
- 2.7** The Commission will approach any financial penalty in the following way:
1. Calculate the detriment to consumers and/or calculate the gain to the license, if possible.
 2. Consider the seriousness of the breach to determine the appropriate penal element of the fine.
 3. Consider any aggravating and mitigating factors that may increase or decrease the penal element.
 4. Consider the need for a deterrence uplift to the penal element, having regard to the principle that non-compliance should be more costly than compliance and that enforcement should deliver strong deterrence against future non-compliance.
 5. Where a case is settled early¹, apply a discount to the penal element if appropriate.
 6. The total amount to be paid by the licensee will be the sum of the figures determined at step 1 and step 4 (or step 5 if the case is settled), subject to any further adjustments to ensure that the total financial liability arising from a financial penalty and/or redress payments is reasonable.
- 2.8** In determining the appropriate financial penalty, the Commission will take into account all the other circumstances of the case, which may include (the list is not exhaustive):
- the seriousness of the breach
 - the impact on the licensing objectives
 - whether there has been a repeated breach or failure by the operator or other group of companies
 - whether the breach arose in circumstances that were similar to previous cases the Commission has dealt with which resulted in the publication of lessons to be learned for the wider industry
 - the need to encourage compliance among other operators
 - whether the breach continued after the licensee became aware of it
 - the scale of the breach of a licence condition across the licensed entity
 - the involvement of middle and senior management
 - the level of any financial gain from the breach
 - the extent of any attempt to conceal the failure or breach
 - the impact on customers and the general public and the extent of steps taken to remedy the breach
 - the absence of internal controls or procedures intended to prevent the breach
 - the awareness and involvement of company boards
 - the duration of the breach
 - the extent of steps taken to remedy the breach
 - early and voluntary reporting of breaches to the Commission
 - timely co-operation with any investigation undertaken by the Commission

Discount to the financial penalty

- 2.9** The Commission, in considering the amount of a financial penalty, will pay particular attention to any timely, voluntary admissions and/or disclosure made by a licensee where concerns have arisen. It will invariably be in a licensee's interests to be full, frank and open with the Commission. In appropriate cases credit may be given for this in the form of a discount from any financial penalty (see step 5 at paragraph 2.8, above), or from any payment in lieu of a financial penalty made as part of a regulatory settlement.

¹ See Regulatory Settlements, as described in the Statement of Principles for Licensing and Regulation, and the Licensing, Compliance and Enforcement under the Gambling Act 2005: policy statement

Such discounts will apply to the penal element of the fine and not to any gain and/or detriment that has been identified by the Commission.

- 2.10** The size of the discount will reflect the stage at which the agreement is reached in the context of the investigation, licence review, or regulatory settlement procedure.

Procedural matters

- 2.11** Section 121 imposes a number of procedural steps which must be taken before the Commission can impose a financial penalty. Before imposing a requirement on a licensee to pay a penalty under this section the Commission must notify a licensee:
- that the Commission proposes to require it to pay a penalty
 - of the amount of the proposed penalty
 - of the Commission's reasons
 - of a period within which the licensee may make representations to the Commission.
- 2.12** The Commission will normally give licensees 14 days to make representations.

Time limits

- 2.13** By virtue of section 121(3) the Commission may not give a notice in respect of the breach of a condition after the end of the period of two years beginning with the day on which the breach occurred or began to occur, or, if later, the day on which the breach came to the knowledge of the Commission.

Payments in lieu of financial penalties

- 2.14** Payments made in lieu of a financial penalty as part of a regulatory settlement do not need to be paid into the Consolidated Fund as financial penalties imposed under section 121 do. As a result there is more flexibility about how such monies may be used. However, The Commission will apply the following principles in approaching such agreed payments:
- a. The Commission reserves the power to approve the destination of monies paid as part of a regulatory settlement
 - b. Operators must not generate positive publicity from the settlement
 - c. Payments need to be demonstrably over and above 'normal' RET contributions
 - d. Where practicable, the operator should return money to any identified victims
 - e. If victims cannot be identified or there are no victims, the monies should be given to charity for socially responsible purposes
 - f. Socially responsible purposes would include purposes which address gambling related harm or in some way promotes one or more of the licensing objectives
 - g. where payments are made with the aim of addressing gambling-related harm, the presumption is that the money would be paid to GambleAware (formerly Responsible Gambling Trust) to be used for specific agreed purposes that accelerate their commissioning plans
 - h. Operators should have no interest in organisations who will receive divested funds
 - i. There should be meaningful evaluation of the effectiveness of projects or research funded by a specific regulatory settlements
 - j. Research findings must be made public to help raise standards
 - k. Clear timeframes should be set for payment of monies and for delivery of work paid for from those monies.

Annex 4

**GAMBLING
COMMISSION**

Indicative sanctions guidance

[MONTH AND YEAR]

1 Introduction

- 1.1** This sets out how the Regulatory panel or employees of the Commission acting under delegated powers (decision makers) will approach the matter of regulatory sanctions following a licence review under section 116 of the Gambling Act 2005 (a licence review). It sets out a framework of matters that are relevant to decisions as to whether the Commission should exercise its powers of regulatory enforcement, and if so, what the appropriate sanction might be.
- 1.2** Any decision as to imposing a sanction is an administrative decision which must be taken in accordance with the framework set out in the Gambling Act 2005, the Gambling Commission's principle and policy documents, and the principles of fairness and natural justice. This guidance is intended to assist decision makers to make fair, consistent, and transparent decisions.
- 1.3** The Commission exercises its functions in the interests of consumers and the general public. Decisions must be made openly, impartially, with sound judgment, and with justifiable reasons. This means that decision makers must:
- come to the decisions they make with an open mind and demonstrate they are open minded
 - make a decision only after due consideration of all information reasonably required upon which to base such a decision
 - seek further information if it is felt they consider there is insufficient information to reach a decision.
- 1.4** It is important that decision makers have not already taken a firm view on a matter, nor that they give the appearance of having made up their mind before the formal consideration of a matter. However, a decision maker will not be considered to have taken a firm view on a matter by:
- just listening to viewpoints from interested parties
 - having prior knowledge of the issues
 - making comments, or giving a provisional view, provided that it is clear that the issue has not been prejudged
 - seeking information through appropriate channels
 - asking questions at a hearing which reflect issues raised.
- 1.5** If a decision maker has any concerns about procedural fairness then they should seek advice from the Commission's legal advisers.
- 1.6** This guidance has been prepared in accordance with the requirements of the Act and the Commission has also had regard to the:
- Statement of Principles for Licensing and Regulation¹
 - Regulators' Code²
 - report of the Hampton Review³
 - report of the Macrory Review⁴
 - Scottish Improving Regulation Report 2008⁵
 - reports of the Regulatory Review Group in Scotland⁶
 - Hampton Implementation Review Report into the Gambling Commission⁷.
- 1.7** This guidance will be reviewed and updated from time to time when appropriate.

¹ The Statement of Principles for Licensing and Regulation is available on the Commission's website

² The Regulators' Code (July 2013) which came into force in April 2014

³ Reducing Administrative Burdens: Effective Inspection and Enforcement, Philip Hampton, March 2005

⁴ Regulatory Justice: Making Sanctions Effective, Professor Richard B. Macrory, November 2006

⁵ The Scottish Improving Regulation Report 2008, July 2008

⁶ Interim Report from the Regulatory Review Group for the Scottish Group, February 2008; Regulatory Review Group Annual Report, July 2008

⁷ Gambling Commission: A Hampton Implementation Review Report, April 2009

2 Deciding what to do at the conclusion of a licence review

- 2.1** 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
 - decide to exercise its powers set out in section 117 of the Act to:
 - give the licensee a warning
 - add, remove, or amend a condition to the licence
 - suspend a licence
 - revoke a licence
 - impose a financial penalty.
- 2.2** The powers under section 117 of the Gambling Act 2005 are not mutually exclusive and may, if appropriate, be exercised in combination.
- 2.3** Through its regulatory enforcement activity, the Commission aims to protect consumers and the general public, and to raise standards in the gambling industry through targeted actions that:
- drive a culture where operators put consumers first
 - improve compliance with the licensing objectives
 - reduce gambling-related harm
 - deter operators from acting in the same way.
- 2.4** In deciding whether to exercise the Commission's regulatory powers the decision maker should have regard to risk to the licensing objectives, as set out in section 1 of the Act, and apply the principle of proportionality, weighing the interests of consumers and the general public against those of the licensee. The decision maker will also need to consider any mitigating or aggravating factors in relation to the seriousness of the matters under consideration.
- 2.5** In all cases due regard should be given to all the evidence gathered during a review, the facts that have been established, and any evidence presented by way of mitigation by or on behalf of the licensee.
- 2.6** The paragraphs below set out the regulatory decisions and sanctions available to decision makers at the conclusion of a licence review, their general effect, and factors indicating when they might be appropriate. The examples are not intended to provide an exhaustive list, but are intended to provide some guidance on the type of situations which are likely to be suitable for the particular sanction.

No further action

- 2.7** The first step in the process is to decide whether the Commission's regulatory powers should be used at all. Deciding that there should be no further action is not in itself regulatory action, but it is a regulatory decision as it means that the Commission is bringing its investigations into regulatory concerns or issues to an end.
- 2.8** Deciding that there should be no further action will be appropriate if the decision maker considers that there are no matters of concern, or where further formal action would not be a proportionate response to the established facts as there is no significant ongoing risk to the licensing objectives. In the latter case it may be appropriate to give the licensee some advice as to their future conduct.

Advice as to conduct

- 2.9** The purpose of giving advice is to ensure future compliance with the Commission's requirements and to assist the licensee discharge their responsibilities in a compliant way in the future. If advice as to conduct is given, consideration should also be given as to whether general advice should be published if it appears that the issue that gave rise to concerns may be prevalent in other parts of the industry.
- 2.10** Advice as to conduct is not a formal warning. However, the Commission will confirm in writing that it has given advice, keep a record of the fact that advice has been given and may refer to an advice to conduct letter in the future if appropriate.
- 2.11** The issuing of advice as to conduct may be appropriate where some or all of the following factors are apparent:
- poor administrative and/or operational procedures, where the licensee demonstrates that they will take steps to improve them
 - isolated and minor breaches of licence conditions or social responsibility codes of practice, where the licensee demonstrates that they have or will take steps to improve compliance
 - where disciplinary action has been taken by an employer against a personal licence holder, arising from circumstances of misconduct of a minor nature
 - inappropriate behaviour by a personal licence holder on gambling licensed premises (on/off duty) which does not involve dishonesty
 - cautions and convictions for offences involving minor instances of assault and/or disorderly behaviour (outside employed licensed duties).

Warnings

- 2.12** Where the decision maker decides that it is not sufficient to conclude a case without exercising the Commission's regulatory powers, then consideration should be given to whether a warning is appropriate. A warning may be appropriate where the concerns about a licensee have been assessed as being of lesser seriousness, but it is nonetheless necessary to formally note failures to meet the licensing objectives and/or licensing conditions that must not be repeated. In most circumstances, information about the circumstances relating to the warning will be published on the Commission's sanctions register.
- 2.13** A warning is not recorded against the licence itself. However, warnings may be taken into account in the future if a licensee is the subject of another licence review or investigation. The Commission will deem subsequent breaches of a similar nature to those addressed by the warning to be a significantly aggravating factor at any future determination of sanction and it is highly unlikely that a warning will be issued again.
- 2.14** Warnings may be appropriate where some or all of the following factors are apparent:
- there is evidence that what happened did not seriously affect consumers
 - the licensee has demonstrated understanding and insight of the issues or concerns which gave rise to the licence review
 - the risk of repetition is low
 - what happened was an isolated incident and was not deliberate
 - the licensee has expressed genuine remorse
 - the licensee has an unblemished regulatory record
 - there has been no repetition of behaviour since the incident
 - the licensee has taken, or is taking, steps in remediation
 - In relation to personal licences, the licensee has produced relevant and appropriate references and testimonials.

Amending conditions or imposing additional conditions to a licence

- 2.15** Amending conditions of a licence or imposing additional conditions is a flexible means of dealing with a case. The licence continues with the additional or amended conditions that have been considered necessary to minimise the risk to the licensing objectives in the future. The imposition or amendment of conditions will be most appropriate where a failure or deficiency on the part of a licensee is capable of being remedied and where the risk of repetition is considered to be low.
- 2.16** Where conditions are imposed they should ensure that customers will not be seriously disadvantaged or affected, either directly or indirectly, and that the conditions will protect consumers and the general public during the period they are in force. Before imposing or amending conditions of a licence the decision maker should be satisfied that there is no general failure, the matter is capable of correction, and that appropriate, realistic, and practicable conditions can be formulated.
- 2.17** Imposing additional conditions may be appropriate when some or all of the following factors are apparent:
- the concern about the licensee does not cause the decision maker to consider that they are unsuitable to continue being a licensee
 - the licensee has demonstrated understanding and insight of the issues or concerns which gave rise to the review
 - there is no significant risk of repetition if the additional licence conditions are complied with
 - there are specific areas in which re-training or other remedial action is required to mitigate the risk of recurrence and the licensee has demonstrated their potential and willingness to respond positively.

Financial penalties

- 2.18** Financial penalties can only be imposed when the Commission consider that a licence condition has been breached. A financial penalty should aim to:
- change the behaviour of the licensee
 - eliminate any financial gain or benefit from non-compliance with licence conditions
 - be proportionate to the nature of the breach of licence condition and the harm caused
 - deter future non-compliance by the relevant licence holder and other licence holders more generally.
- 2.19** Imposing a financial penalty may be appropriate when most some or all of the following factors are apparent:
- the breach of a licence condition was committed intentionally or recklessly
 - the licensee was aware or should have been aware of the breach
 - there was a repeated breach of a licence condition
 - there was a systemic failure to comply with a condition of the licence
 - the breach gave rise to financial gain for the licensee
 - the breach of a licence condition had an impact on consumers
 - the breach of a licence condition may have damaged confidence in the gambling industry
 - the licensee did not report the breach of a licence condition to the Commission
 - where there is a lack of effective remedial action after the breach or failure becomes apparent to the licensee
 - where a financial penalty is necessary to deter future contraventions or failures and to encourage compliance, on the part of both the licensee and other operators.

- 2.20** More detailed guidance on financial penalties can be located in the Commission's *Statement of principles for determining financial penalties*. Decision makers considering a financial penalty must apply the principles outlined in this document.

Suspension

- 2.21** The Commission may only suspend 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 cooperate with a review
 - the licensee is unsuitable to carry on the licensed activities.
- 2.22** Suspension of a licence has a punitive effect in that it prevents an individual or operator from carrying out regulated activities during the period of suspension.
- 2.23** Suspension is likely to be appropriate for misconduct or incompetence that is serious, but not so serious as to justify revocation of the licence. A period of suspension will allow a licensee to take steps to remedy the breach or concerns which gave rise the Commission's intervention, following which the licensee will be able to commence the licensed activities.
- 2.24** The length of the suspension is a matter for discretion, depending on the gravity of the particular case, but should be for as short a period as is appropriate to the circumstances of the case.
- 2.25** Subject to the requirements for suspension outlined above being met, suspension may be appropriate when some or all of the following factors are apparent:
- where there are concerns about serious on-going breaches
 - where there are concerns that the continuation of licensed activities is a risk to consumers and/or the general public
 - there has been a serious instance of unacceptable conduct and a lesser sanction is not sufficient
 - the concern about the licensee causes the decision maker to believe that they are fundamentally unsuitable to be licensed
 - the licensee has demonstrated an understanding of the issues or concerns which gave rise to the review, with the result that there is no significant risk of a repetition of behaviour once the period of suspension has elapsed.
- 2.26** The Commission also has the power to suspend a licence when it decides to conduct a licence review, or at any time during the course of a licence review.

Revocation

- 2.27** The Commission may only 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 cooperate with a review
 - the licensee is unsuitable to carry on the licensed activities.
- 2.28** Revocation of an individual or an operator's licence is appropriate where this is the only means of protecting consumers and maintaining public confidence. However, decision makers should not feel it necessary to revoke a licensee's licence in order to satisfy public demand for blame and punishment.

2.29 Revocation is likely to be appropriate when what occurred demonstrates that the licensee is unsuitable to hold a licence, and involves any of the following:

- there has been a serious breach of the Commission's licence conditions or social responsibility codes of practice
- what happened seriously affected consumers, either deliberately or through incompetence
- there is a continuing risk that what happened will be repeated
- what happened involved abuse of position or trust
- dishonesty (especially where persistent and/or covered up)
- persistent lack of insight or understanding of the seriousness of what happened, the reasons that led up to a problem or the consequences.

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