



GAMBLING COMMISSION

Gambling Act 2005 – Co-regulators' Concordat between the Gambling Commission and Local Government Regulation

Protocols

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Introduction

- i.** In March 2010 the Gambling Commission (the Commission) and Local Government Regulation (LG Regulation) representing licensing authorities (LAs) published a Concordat setting out shared principles by which the Commission and LAs would operate as co-regulators of gambling in England and Wales.
- ii.** This document contains a number of protocols that underpin the Concordat and sets out in more detail some of the principles which the Commission and LAs (the co-regulators) will follow in relation to joint working in the following areas:
 - Communication structures (protocol 1)
 - Exchange of information (protocol 2)
 - Compliance and enforcement (protocol 3).
- iii.** The protocols will be kept under review and will, when need arises, be amended and new ones added to respond to changing circumstances. Such reviews will be a joint process between the Commission, LG Regulation and LAs.
- iv.** This document and the sections on the protocols should be read alongside the Concordat and the Guidance to Licensing Authorities 3rd edition dated May 2009 (GLA) (or any subsequent replacement to this guidance).

Gambling Act 2005 – Co-regulators’ Concordat between the Gambling Commission and Local Government Regulation

Protocol 1: Communication structures

- 1.1** This protocol sets out the arrangements for the efficient management of structured communication at a local, regional and national level between the Gambling Commission (the Commission), LG Regulation and licensing authorities (LAs).

The role of communication in co-regulation

- 1.2** We recognise that efficient and effective communication plays a vital role in achieving the wider objectives of the Concordat. These include the sharing of intelligence, the avoidance of duplication or over-regulation, ensuring that there is a consistency of approach to the regulated industry as well as proportionate action being taken by the appropriate regulator where incidences of non-compliant or illegal activity occur.
- 1.3** The arrangement for communication is designed to ensure that the three levels of our communication structure and engagement (local, regional and national) are reflected and linked in order to allow for both the escalation of issues from a local or regional level as well as the timely cascading of information from the national level downwards.
- 1.4** This protocol sets out the regular channels by which, amongst other things, intelligence is shared, new trends detected, policy developments discussed and emerging threats to the licensing objectives identified. There may be other channels of communication that develop over time that are agreed and this protocol does not preclude these.

The structure and process of communication

Local work

- 1.5** It is critical to the success of our work as regulators at a local level that there is an effective connection between the Commission, and the licensing department. Typically, Commission compliance managers work with LA licensing officers¹ to ensure that operators are compliant with the requirements of the Gambling Act 2005 (the Act), and to give advice and support to LAs when dealing with enforcement issues. Licensing officers also communicate with compliance managers regarding any issues that have an impact on carrying out their functions under the Act. Thus, the structure and process of communication is important in everyday work.
- 1.6** As well as routine ongoing communication it is important that information is shared at an early stage where there is any risk to the duplication of effort of regulatory activity. One party will inform the other where there are either matters of non-compliance or illegality for which the other party is primarily responsible and/or where the other partner has the most appropriate powers to deal with it. Details of any ongoing action and the outcome of action taken on the basis of such reports will be shared subsequently. An example of how this can work in practice is provided in the shaded box below.

¹ For further information on roles of compliance managers and licensing officers, see Annex A

- 1.7** Where a joint operation is agreed to be appropriate because of the overlapping responsibilities of both regulators, the decision as to which party is best placed to lead the work will be informed by the priorities outlined in the Concordat – the Commission being more concerned with risks that are identified as high in impact and of regional or national significance and LAs for risks within their own geographical boundaries.
- 1.8** Both regulators will work to ensure there are neither gaps in the regulatory landscape nor incidents of non-compliance for which neither party takes primary responsibility.

Example: Illegally sited gaming machines

The Commission received intelligence that a number of gaming machines were illegally sited in a shop premises. The Commission sent a report to the relevant licensing authority alerting them to the report. The licensing authority subsequently contacted the Commission updating them on the situation. The licensing authority decided to issue a warning to the owner of the premises that they were in breach of S37 of the Act (using the premises to make a gaming machine available for use). The authority also informed the Commission of details of the machine supplier. It was subsequently discovered that the machines were illegally supplied and linked to other illegally sited machines. The Commission and HMRC subsequently prosecuted the company concerned.

The machines were seized by HMRC who led an operation with support from the Commission and the LA.

The success of the operation is an example of effective communication and joint working between all parties and similar activity has been seen across the country. In some cases, a press release will be sent out by the licensing authority or the Commission to publicise the operation and the text is agreed by both parties prior to publication.

Regional work

- 1.9** Regional licensing groups act as the fora for both the discussion of issues which have a greater than local significance and the sharing of good practice in regulation.
- 1.10** We recognise that existing regional arrangements have developed in response to the geography, local political structures and interests that prevail in each part of the country. We will work within and respect these existing arrangements and not seek to impose a uniform approach.
- 1.11** Commission compliance managers and LA licensing officers will therefore use existing local and regional licensing groups as fora for sharing:
- good practice
 - information and intelligence
 - issues of mutual concern.
- 1.12** The regional licensing group is likely to be the forum at which emerging trends are first detected – for example a new innovation within the regulated industry or new patterns of illegality. To enable both regulators to respond in a timely and appropriate manner we will encourage regional groups to act in this way and share such intelligence at the earliest opportunity.
- 1.13** Regional licensing groups play a pivotal role in the escalation of issues. They can request consideration of an issue to the LG Regulation Policy Forum to which the Commission is invited.

Example: Work carried out with the Association of Greater Manchester Authorities (AGMA)

The joint working relationship with the Commission and the AGMA licensing managers' group has built up over the last three years, where a compliance manager regularly attends to provide relevant information, listen to concerns and issues raised by LAs and feed this information back to Commission colleagues. It is also a good opportunity for LAs to communicate information that may be relevant to the Commission's regulatory activity.

Several members of the group had received split premises applications and raised this issue at a meeting. There was some confusion over the guidance issued by the Commission which the compliance manager was able to elaborate on and explain how this would relate to premises applications. The result of this meeting was that all LAs present understood what was expected and all implemented very similar versions of their requirements to ensure consistency across the LAs. A similar situation then arose with primary gambling activity and splitting of bingo premises, where the requirements for each premises were discussed and a common approach was adopted.

National work

- 1.14** At a national level there are two current methods by which the Commission, LAs and LG Regulation meet to conduct business. The first is the LG Regulation Policy Forum which meets three times per year and contributes to and proposes future strategy and ensures effective policy on licensing and gambling matters. The Forum provides an opportunity to update on matters of mutual interest, to discuss issues that have, for example, been raised at a regional licensing group and exchange thoughts on the wider regulatory landscape. Minutes are published on the LG Regulation website. The Forum is attended by the nominees of regional licensing groups from government regions in England and Wales and representatives from the Commission and central government. The purpose of the Forum is to focus on matters relating to the Licensing Act 2003 and the Gambling Act 2005.
- 1.15** It also contributes to LG Regulation's business planning and provides advice to help the organisation focus on key licensing and gambling issues for councils, and assists in the provision, coordination and dissemination of licensing and gambling advice to LAs, in particular through LG Regulation's website and email briefings.
- 1.16** Secondly, the Local Authority Casino Network Forum meets on a bi-monthly basis to discuss issues facing the 16 LAs granted the right to issue new casino premises licences under the Act. The group is made up of representatives from the LAs, and the Commission and DCMS frequently send representatives. The group discusses issues such as research and the state of the casino market as well as providing support and advice for one another in preparing for the competition processes for the granting of the new casino premises licences.

Protocol 1: Communication structures

Annex A – The role of a compliance manager and a licensing officer

A crucial partnership for licensing authorities (LAs) in dealing with gambling matters is with the Commission, via its regional compliance managers. Compliance managers work with licensing authorities to ensure that premises are compliant with the requirements of the Gambling Act 2005 (the Act), and to give advice and support to LAs when dealing with enforcement issues. A compliance manager works with a number of licensing authorities (LAs) and is managed by a regional compliance manager.

Compliance managers are designated enforcement officers under Part 15 of the Act. The role of a compliance manager is to carry out risk based regulatory action, and to provide advice to all relevant parties including operators and licensing authorities.

An LA licensing officer is responsible for carrying out the functions of the local authority in its statutory role as a licensing authority, and is also a designated enforcement officer under Part 15 of the Act.

Typically, a licensing officer's duties include the processing, determination, issue and maintenance of applications and licences issued under the Act and other licensing regimes, as well as for the preparation and presentation of reports to council licensing committees. They also deal with enquiries received by the LA and carry out compliance and inspection duties on behalf of the LA.

Gambling Act 2005 – Co-regulators' Concordat between the Gambling Commission and Local Government Regulation

Protocol 2: Exchange of information

- 2.1** This protocol sets out the arrangements for managing and sharing knowledge and information between the Gambling Commission (the Commission) and licensing authorities (LAs).

Data Protection Act 1998 and Human Rights Act 1998

- 2.2** Any decisions on exchange of information by the Commission or a LA must take account of the provisions of the Data Protection Act 1998 (DPA) and Human Rights Act 1998 (HRA).
- 2.3** The DPA establishes a framework of rights and duties which are designed to safeguard personal data. This framework balances the legitimate needs of organisations to collect and use personal data for business and other purposes against the right of individuals to respect for the privacy of their personal details. It is underpinned by a set of eight principles. All personal data should be handled in line with those principles.
- 2.4** Personal data must be processed in accordance with the DPA unless one of the exemptions in that Act applies. The exemptions either allow for the disclosure of information where there would otherwise be a breach of the DPA or allow information to be withheld that would otherwise need to be disclosed. They are designed to accommodate special circumstances, for example when processing personal data:
- in connection with criminal justice, taxation or regulatory activities
 - that is required to be made public
 - where disclosure is required by law or is necessary for legal proceedings
 - to provide a confidential reference.
- 2.5** The Gambling Act 2005 (the Act) provides for information to be shared between the Commission and other bodies, but nothing in the Act authorises a disclosure that contravenes the DPA.
- 2.6** The HRA gives legal effect in the UK to the fundamental rights and freedoms contained in the European Convention on Human Rights. It follows that the exchange of information must comply with the requirements of the HRA.
- 2.7** There are also common law provisions, especially in relation to issues relating to breach of confidentiality, which must be followed.

Further disclosure of information

- 2.8** Where one party receives a request for information originating from the other party, they will make the originator aware and take their views into account concerning disclosure. This includes requests for information made under the Freedom of Information Act 2000 (FOI).

- 2.9** Both regulators agree that shared information:
- should only be retained for the period necessary to achieve the objectives of the disclosure
 - shall be attributable and traceable to the other by marking or referencing
 - shall have security controls applied to all processing, including transmission, storage and destruction, and that personal data shall be protected according to principle 7 of the DPA which states: Appropriate technical and organisational measures shall be taken against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data
 - shall be handled by appropriately trained and vetted staff.
- 2.10** This guidance is not intended to be exhaustive and is not a substitute for expert legal advice.

Purpose of collating and sharing information

- 2.11** Under section 26 of the Act, the Commission has a duty to advise the Secretary of State about the incidence of gambling and the manner in which it is conducted. Section 29 of the Act entitles the Commission to seek information from LAs providing it is part of a register maintained by the LA, or in the LA's possession in connection with a provision of the Act.
- 2.12** The purpose of information exchange is not only to fulfil the requirements under the Act, but also to enable both the Commission and LAs to carry out work related to their regulatory functions in a risk-based manner, using the best available information.
- 2.13** In keeping with the Hampton principles and the Regulators' Compliance Code, we seek to avoid the risk of duplication or over-regulation and maximise the efficient use of our resources. To accomplish this, we recognise the need to share information about our inspection and compliance activities regularly.
- 2.14** The gambling industry is constantly evolving and looking for new ways of providing gambling opportunities. As regulators we support innovation and help operators to interpret and comply with the framework set out in the Act. It is important for both the Commission and the LAs, to share information on new developments and trends as we come across them, and to satisfy ourselves that these are compatible with the legislation and associated regulations.

Information requirements

Premises data

- 2.15** It is important for the Commission to maintain registers of the various forms of gambling activity to understand the national picture and for LAs to gain a regional and in some cases a national picture. It is therefore important to share this information with each other to effectively work together.
- 2.16** The Act requires LAs to maintain data on premises licences and to provide this information to the Commission. As part of the application process for a premises licence, applicants will forward notice of the application to the Commission, and LAs subsequently notify the Commission of the outcome of each application - whether it is granted or refused.
- 2.17** LAs are also required to inform the Commission of any changes to licences, such as variations, transfers, lapses, reinstatements, and surrenders. The Commission's national data set for premises licences should be accurate as it is used for conducting national compliance work. Accuracy also reduces the need for the Commission to request ad hoc information on particular premises from the LAs, which is time consuming and resource intensive.

2.18 The Commission may make observations and representations on the suitability of the applicant for a premises licence or any other aspect of the application. In such cases, the Commission and LA will discuss matters pertaining to the application, and the appropriate action to take. An example of how this works in practice is provided in the shaded box below. More information on the Commission's role as a responsible authority and its involvement in individual premises licence applications is given in the Commission's Guidance to Licensing Authorities (GLA) (at paragraph 8.7 in the 3rd edition dated May 2009).

Example: Primary gambling activity and splitting of betting premises

LAs issue premises licences to operators that offer gambling within the authority's area. Operators are required to adhere to the Commission's Licence Conditions and Codes of Practice (LCCP) with regard to primary gambling activity, in that a holder of a premises licence must ensure that the gambling activity appropriate to the licence type is actually offered as the primary activity at the premises.

In 2009, a number of applications were submitted to various LAs by several operators seeking to split existing betting premises. The applications relating to betting shops proposed to split what had been one betting premises into two betting premises, and another similar application proposed to change a premises located in a building which contained two adult gaming centres into a betting premises and an adult gaming centre. All the proposals would result in a significant increase in the number of category B gaming machines at each location.

The Commission was concerned whether the proposed betting shops would meet the LCCP requirements for primary gambling activity. The Commission, LG Regulation and relevant LAs worked actively together and discussed their concerns about the applications from a very early stage.

As part of the Commission's ongoing commitment to develop its relationship with LAs and ensure that the regulated landscape is as clearly understood as possible by all concerned, the Commission consider it important to make targeted representations which help in establishing both principle and precedent. Therefore, the Commission made representations on these applications. Throughout the process, all parties were kept informed on the progress made. The applications were subsequently withdrawn.

Returns

2.19 All LAs are required to submit returns to the Commission on an annual basis, providing information on licensed gambling activity and details of compliance and regulatory work undertaken. This includes providing details of permits and notices issued, premises inspections conducted, and reasons for and outcome of licence reviews.

2.20 The returns are an important source of information and can assist both the Commission and the LAs in improving their work as risk based regulators. The returns provide the Commission with details of LA compliance and regulatory work. Both parties will work together to ensure that the returns process is managed effectively.

2.21 LAs will ensure that the information on the returns is accurate and sent to the Commission within agreed timescales. In return, the Commission will ensure that information derived from the returns is analysed and reported to LAs to help identify risks and prioritise work.

2.22 The Commission will minimise the burden imposed on LAs by keeping its data requests to an absolute minimum. The quarterly returns initially required from all LAs have already

been replaced by an annual return. The data requirements will be kept under review to ensure that any data requests have a clear and valid regulatory purpose².

Other information requirements

- 2.23** Small society lotteries: LAs are responsible for registering societies to run small society lotteries and are required to record details of the society on a register and to notify both the applicant and the Commission of this registration.
- 2.24** Club Gaming Permits: When an LA either grants or rejects an application for a Club Gaming Permit they are required to inform both the applicant and the Commission.

Intelligence exchanges between licensing authorities and the Commission

- 2.25** The Commission is dependent on information from various sources, including from the police and LAs, to uncover illegal activity associated with gambling. To ensure operator compliance with licence conditions, and to make certain that appropriate enforcement action is taken, information on the misconduct of gambling operators and illegal gambling will be exchanged. Where the Commission identifies local gambling infringements, the relevant LAs will be informed so that they can take action as appropriate.
- 2.26** Protocol 3 contains more detailed provisions on matters of compliance and enforcement.
- 2.27** The Commission and LG Regulation will continue to develop efficient ways to collate and share information. All parties will be engaged at the earliest opportunity when discussing any proposals regarding information sharing.

Information on specific operators that the Commission makes available to licensing authorities

- 2.28** The Commission is required under section 106 of the Act to maintain a register of operating licence holders and make this publicly available. Where a LA needs to check if an applicant for a premises licence holds an operating licence, verification can be found on the edited register on the Commission's website. An unedited register can be made available upon request.
- 2.29** The Commission will inform the relevant LAs of any changes to operating licences that may have an impact on the status of related premises licences.

² See Annex B for a list of data to be submitted by LAs

Protocol 2: Exchange of information

Annex B – list of data requirements

| Licensing function | Event requiring information to be sent to Commission |
|---|---|
| Premises licences and provisional statements | Licensing authority has granted / rejected an application for a premises licence or provisional statement |
| | A premises licence has lapsed |
| | Licensing authority has granted or rejected an application to reinstate a premises licence |
| | Licensing authority has granted or rejected an application to transfer or vary a premises licence |
| | A review of a premises licence has been completed and a decision made |
| | A hearing is to be held where the Commission has made a representation |
| | A premises licence has been surrendered |
| Club permits | A club permit application has been granted / rejected |
| Small society lottery registration | Licensing authority registers a society to operate small lotteries |
| | Licensing authority cancels a society's registration to operate small lotteries |
| | Where a society has exceeded the permitted proceeds for small lotteries |
| Issue of permits and temporary permissions | Licensing authority returns |
| Inspections and reviews | Licensing authority returns |

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Gambling Act 2005 – Co-regulators' Concordat between the Gambling Commission and Local Government Regulation

Protocol 3: Compliance and enforcement

- 3.1** This protocol sets out in more detail the main principles which the Gambling Commission (the Commission) and local authorities (LAs) will follow in relation to conducting compliance and enforcement activity.
- 3.2** LAs are best placed to monitor and ensure compliance with the Act at a local level. For example, they are generally in the best position to proceed against individual licensed premises, where the impact is high in that local situation, although the Commission will consider compliance activity against operators who have a large regional or national presence and where the failing is more widespread.
- 3.3** The Commission and LAs undertake to share information and evidence, and generally to collaborate on compliance matters of joint interest. A co-ordinated approach will lead to more efficient working and use of resources, and will achieve a greater impact on ensuring compliance in the gambling industry.
- 3.4** The Commission recognises that LAs will each have different priorities and that this will have a bearing on their approach to the licensing of premises and to compliance. It is a matter for the local democratic process to make such decisions and to reflect local concerns. The Commission and LAs both operate a risk-based methodology.
- 3.5** When planning individual operations, it is important that the Commission and LAs liaise with each other well in advance of starting an operation. This will avoid conflict or duplication with any existing scheduled operation by the other regulator. Where appropriate, and where resources permit, joint operations may be conducted using personnel from both regulators. The Commission will notify LG Regulation in advance of any individual and joint operations it undertakes that may be of relevance to the work carried out by LAs.
- 3.6** Depending upon the circumstances and the nature of a particular operation, either the Commission or the LA will lead on a joint operation, with the other party in a supporting role. The lead organisation has the responsibility for setting the methodology for the operation. Responsibilities will be established at the planning phase of any joint operation as will the methodologies to be used and any follow up actions where appropriate.
- 3.7** Where the regulators are engaged in a joint operation, each regulator will bear its own costs including any overtime costs incurred. Each regulator will be responsible for ensuring the health and safety of its own staff and co-operating with each other when engaged in joint operations.
- 3.8** Public communication following joint operations will be discussed during the planning stage with the Commission, LAs and LG Regulation. The aim will be to agree both a joint statement and a plan for how and when such communication is to be issued. Where an operation has been conducted independently (without the involvement of the other

regulator) we agree to inform one another prior to any communications (such as press releases) being published.

- 3.9** Information which arises from compliance and enforcement activity, including test purchasing operations, will be shared between the Commission and the LAs where possible. This may include action plans produced by operators to address any shortcomings that were identified by the exercise.
- 3.10** Regulators should take into account the LG Regulation test purchasing guidance, which is available via the LG Regulation website.

Example: Test purchasing operation

In November 2009 a test purchase operation was conducted on betting premises belonging to national operators, across England and Wales. The Commission and relevant LAs worked together from an early stage of the planning phase as well as during the operation itself.

The purpose was to test the controls operators had in place to prevent underage gambling. The Commission engaged with relevant LAs and where resources permitted, tests were conducted with teams comprising both Commission and LA staff.

At the conclusion of the operation each LA was notified of the results of the tests as well as being provided with an early copy of the press release.