

GAMBLING COMMISSION

Statement of principles for licensing and regulation

September 2009

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) and explains how these principles are expected to assist the Commission in its pursuit of the licensing objectives in the Act.

The licensing objectives

- 1.2 The licensing objectives are set out in the Act¹ and are:
- preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime
 - ensuring that gambling is conducted in a fair and open way
 - protecting children and other vulnerable persons from being harmed or exploited by gambling.

The duty to pursue the licensing objectives and permit gambling

- 1.3 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 objectives².

Statutory requirements and better regulation principles

- 1.4 This statement has been prepared in accordance with the requirements of sections 23, 70, 73, 111, 112, 116 and 128 of the Act. The Commission has also had regard to the
- Regulators' Compliance Code³
 - report of the Hampton Review⁴
 - report of the Macrory Review⁵
 - Enforcement Concordat⁶
 - Cabinet Office Code of Practice on Consultation⁷
 - Scottish Improving Regulation Report 2008⁸
 - reports of the Regulatory Review Group in Scotland⁹
 - Hampton Implementation Review Report into the Gambling Commission¹⁰.

Statutory requirements and better regulation principles

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

The Commission's jurisdiction

- 1.6 The Commission's jurisdiction covers Great Britain – England, Scotland and Wales. The Commission will maintain appropriate working relationships with each administration and will take account of the differences between them.

¹ Section 1 Gambling Act 2005

² Section 22 Gambling Act 2005

³ Regulators' Compliance Code: Statutory Code of Practice for Regulators, Department for Business, Enterprise and Regulatory Reform, 17 December 2007

⁴ Reducing Administrative Burdens: Effective Inspection and Enforcement, Philip Hampton, March 2005

⁵ Regulatory Justice: Making Sanctions Effective, Professor Richard B. Macrory, November 2006

⁶ Concordat on Good Enforcement, Cabinet Office, March 1998

⁷ Code of Practice on Consultation, Cabinet Office, January 2004

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

2 The Commission's statutory functions

Introduction

- 2.1** The Commission's functions in relation to licensing and regulation can broadly be categorised as those of licensing, compliance and enforcement. In particular, the Commission has the power to:
- determine applications for operating and personal licences, specify the (general and individual) conditions to be contained in such licences, limit the duration of such licences¹¹, and determine applications to vary or renew operating and personal licences
 - undertake activities for the purpose of assessing compliance with the Act and with any licence condition, code of practice or other provision made by or by virtue of the Act, and also for the purpose of assessing whether an offence is being committed under or by virtue of the Act (including the power to request information from operating and personal licence holders under section 122 of the Act, to commence 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), to void a bet and require repayment of any money paid in relation to it, and to investigate and prosecute¹² offences committed under the Act.

The framework of policies and procedures

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

What the Commission expects from applicants for licences

- 2.3** The Commission expects applicants for licences to:
- be able to demonstrate that they can meet the Commission's suitability assessment
 - ensure that the activities they plan to carry out will be conducted in a manner which minimises the risks to the licensing objectives
 - work with the Commission in an open and co-operative way
 - disclose to the Commission anything which the Commission would reasonably expect to know.

¹¹ 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.

¹² 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.

What the Commission expects from licensees

- 2.4** 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.
- 2.5** The Commission also expects those holding licences, including, as appropriate, personal licences, to:
- conduct their business with integrity
 - act with due care, skill and diligence
 - take care to organise and control their affairs responsibly and effectively and have adequate systems and controls to minimise the risks to the licensing objectives
 - maintain adequate financial resources
 - have due regard to the interests of customers and treat them fairly
 - have due regard to the information needs of customers and communicate with them in a way that is clear, not misleading, and allows them to make a properly informed judgment about whether to gamble
 - manage conflicts of interest fairly
 - work with the Commission in an open and co-operative way
 - disclose to the Commission anything which the Commission would reasonably expect to know.

3 Applicable principles

Introduction

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

Regulating gambling in the public interest

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

Precautionary approach

- 3.3** The Commission will adopt a precautionary approach when interpreting evidence, where this is appropriate, having regard to its duty to promote the licensing objectives in the Act.

Keeping the Commission's regulatory approach under review

- 3.4** 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

- 3.5** The Commission will consult on changes to its regulatory approach where it is appropriate to do so, having regard to the Cabinet Office Code of Practice on Consultation¹³ 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.

The Commission's decision making processes

- 3.6** The Commission will ensure that licensing and regulatory decisions are properly reasoned and evidence-based¹⁴ 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 Commission¹⁵, so that decisions of similar complexity and impact are generally made at similar levels within the Commission.

¹³ Code of Practice on Consultation, Cabinet Office, January 2004

¹⁴ 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.

¹⁵ The Commission's practice regarding the delegation of functions in relation to licence applications is specified in its Corporate Governance Policy (as amended from time to time). Those parts of Appendix 8 which deal with the grant or refusal of licence applications are incorporated into this statement by reference, in accordance with the requirements of section 73(4) of the Act.

Confirming licensing and regulatory decisions

- 3.7** The Commission will provide written notification of licensing and regulatory 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).

The relevance of criminal convictions

- 3.8** 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 licences¹⁶ having regard to the nature and seriousness of the offence and the time which has elapsed since the offence was committed.

Failure to declare convictions

- 3.9** The Commission will attach significant weight to failure by a licence applicant to declare a conviction for a relevant offence 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 opportunity to make oral representations

- 3.10** The Commission will provide an opportunity for licence applicants to make oral representations to it in appropriate circumstances¹⁷.

The suitability of local authorities to run lotteries

- 3.11** The Commission will assume integrity when assessing the suitability of any local authority to run a lottery¹⁸.

Imposing the minimum burden necessary to promote the licensing objectives

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

Requests for information

- 3.13** The Commission will request only that information which it requires¹⁹ and will avoid duplicating requests by seeking to obtain information from government bodies (for example, the Serious Fraud Office) and other regulators (for example, the National Lottery Commission, the Office of Fair Trading, the Office of Communications and the Financial Services Authority) where it is possible, and appropriate, to do so.

¹⁶ 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.

¹⁷ 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.

¹⁸ 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.

¹⁹ 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.

Focusing on preventative activity

- 3.14** The Commission will focus on preventative activity by keeping the gambling industry fully informed of the requirements of the regulatory regime and providing general information, advice and guidance, both on request and on its own initiative, with a view to aiding regulatory compliance.

Complaints

- 3.15** The Commission will treat all complaints seriously and will address them in accordance with its published complaints procedure.

Adopting a risk-based approach

- 3.16** 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

- 3.17** 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.

Taking regulatory action in preference to criminal action

- 3.18** The Commission will take regulatory action in preference to commencing criminal investigations unless it is appropriate to do otherwise.

Licence reviews and criminal convictions

- 3.19** 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.

Publication of regulatory action

- 3.20** The Commission will publish details of any regulatory action taken, except where it considers that this may have a disproportionately damaging effect on the licence holder.

Enforcement of gambling contracts

- 3.21** The Commission expects parties to gambling contracts to take private law action in respect of any breach. The Commission will not, except in exceptional circumstances, undertake reviews where debt enforcement proceedings could be brought by the parties to a gambling contract.

Focus on investigating offences in which gambling is an intrinsic element

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

Considering the outcome of investigations into offences not related to gambling

3.23 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.

Coordinating regulatory action

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

4 Promoting the licensing objectives

Introduction

4.1 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

- 4.2 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.
- 4.3 The Commission will take a serious view of applicants and licensees who have convictions for relevant offences²⁰. 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.
- 4.4 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 companies²¹ and others relevant to the operation of gambling.
- 4.5 The Commission will provide advice of a general nature about compliance to licensed operators and potential operators.
- 4.6 The Commission will provide guidance to local licensing authorities and to British Police Forces.
- 4.7 The Commission will make available general advice to the public on what activities are permissible without a licence.
- 4.8 The Commission will employ staff with the necessary skills and knowledge and will delegate to them the necessary powers they need to carry out compliance and enforcement functions.
- 4.9 In relation to the prevention, investigation and prosecution²² 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 and offences under the Proceeds of Crime Act, and
 - crimes which affect the outcome of gambling for other participants.
- 4.10 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.

²⁰ As defined in schedule 7, Gambling Act 2005

²¹ Within the meaning of section 422 of the Financial Services and Markets Act 2000

²² 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.

- 4.11** 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.
- 4.12** 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

- 4.13** The Commission expects that not only is gambling fair in the way it is played, but that the rules are transparent to players and they know what to expect.
- 4.14** 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.
- 4.15** The Commission will ensure that the rules are fair and that easily understandable information is made available by operators to players about, for example: the rules of the game, the probability of losing or winning, and the terms and conditions on which business is conducted.
- 4.16** The Commission will ensure that appropriate advertising codes continue to be in place to prevent consumers from being misled.
- 4.17** The Commission will require operators to make public the results of events and competitions on which commercial gambling takes place.
- 4.18** 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.
- 4.19** In the event of non-compliance, the Commission will ensure that sanctions are imposed which, among other things, deter future non-compliance on the part of the relevant licence holder and other licence holders more generally.
- 4.20** The Commission will ensure that the investigation and prosecution²³ of offences under the Act – including the offence of cheating under section 42 of the Act – is given priority based on the level of risk posed to the licensing objectives.

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

- 4.21** The Commission has issued and will from time to time revise its guidance to licensing authorities about how they can ensure that gambling premises are presented in such a way that access by children can be prevented.
- 4.22** 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.

²³ 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.

- 4.23** 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.
- 4.24** The Commission will work with the Committees of Advertising Practice to develop advertising codes on gambling and will ensure that these are backed by effective enforcement action if those codes are breached.
- 4.25** With regard to ‘vulnerable persons’ the Commission considers that this group will include:
- people who gamble more than they want to
 - people who gamble beyond their means; and/or
 - people who may not be able to make informed or balanced decisions about gambling, for example because of mental health problems, learning disability, or substance misuse relating to alcohol or drugs.
- 4.26** Although the Commission’s role does not, for example, extend to treatment or care of those who have gambling problems, the Commission does have an interest in keeping up to date with developments and trends in work of that kind.
- 4.27** The Commission will issue codes that include social responsibility requirements, setting out what practical measures operators must take in relation to social responsibility.
- 4.28** The Commission will ensure that marketing practices (including advertising and inducements) do not exaggerate the chances of winning or encourage players to gamble more than they can afford or want to.
- 4.29** The Commission will work with other bodies to build and maintain knowledge about problem gambling and the measures that may be taken to reduce the prevalence of problem gambling and will undertake regular prevalence surveys.
- 4.30** The Commission will normally rely on external research but may find it helpful to carry out, or commission, applied research on the effectiveness of particular measures – both before they are implemented and to monitor how effective they are in practice. In interpreting the available evidence, the Commission will take a precautionary approach. 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.
- 4.31** 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.
- 4.32** 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.
- 4.33** The Commission will also give priority to the investigation and prosecution²⁴ 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.

²⁴ 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.

Keeping gambling fair and safe for all

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

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

Gambling Commission
Victoria Square House
Victoria Square
Birmingham B2 4BP

T 0121 230 6666
F 0121 230 6720
E info@gamblingcommission.gov.uk

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