

# GAMBLING COMMISSION

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

**June 2017**

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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 Lottery<sup>1</sup>. The legislative regime governing the National Lottery is principally set out in National Lottery etc. Act 1993 (as amended). This policy statement does not cover regulation of the National Lottery. Details of how the Commission [regulates the National Lottery](#) can be found 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 document should be read in conjunction with *Statement of principles for licensing and regulation*, which it builds on by setting out the Commission's regulatory policies in relation to:
- assessing risk
  - licensing operators and key personnel
  - carrying out compliance activities
  - regulatory and criminal enforcement.

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<sup>1</sup> 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 documents are available online at [www.gamblingcommission.gov.uk](http://www.gamblingcommission.gov.uk)

## 2 Assessing risk

- 2.1** The Commission's approach to risk underpins its licensing, compliance and enforcement functions. This chapter sets out the key elements of the Commission's risk methodology, including the processes for addressing and reviewing risk.
- 2.2** The Commission's risk methodology is applied in order to establish a regulatory risk assessment for licence holders. This informs the level and nature of 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
  - controller<sup>2</sup> integrity
  - business integrity:
    - financial circumstances
    - governance, structure and resource.
- 2.6** The risks related to the type of gambling facility offered include:
- gambling product or facility
  - market scope.
- 2.7** The risks presented through the provision of gambling facilities include:
- location and operating environment
  - consistency with the licensing objectives.

### Identifying risk

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

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<sup>2</sup> Within the meaning of section 422 of the Financial Services and Markets Act 2000

- 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 our website.

3.4 Where an operator is required to have Personal Management Licence holders in specified management offices, the Commission expects that the person who occupies the Head of Compliance role will not normally also occupy one of the other specified management offices<sup>3</sup>.

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

### Information and evidence

3.6 All applicants are required to supply the Commission with sufficient and complete information to support their application, and in particular information that will enable an assessment 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 form<sup>4</sup>.

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

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

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

- police forces in UK and abroad
- references provided to the Commission.

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

### **Assessment and determination of the application**

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

**3.10** In considering operating licence applications the Commission will include assessment of the suitability of those persons considered relevant to the application. The persons considered relevant may vary depending on the information provided in the operating licence application and on company structure, but are likely to exercise a function in connection with, or to have an interest in, the licensed activities. General guidance on who may be considered relevant is available on the Commission's website and in regulations<sup>5</sup>.

### **Suitability**

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

- **Identity and ownership** – the identity of the applicant and or person(s) relevant to the application, and, in the case of an application for an operating licence, who ultimately owns a corporate applicant.
- **Finances** – financial and other circumstances of the applicant 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.

### **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.

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<sup>5</sup> The Gambling Act 2005 (Definition of Small-scale Operator) Regulations 2006



## 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 Act<sup>6</sup> allows for the refusal of an application on that ground alone if the applicant or a person relevant to the application has a conviction for a relevant offence<sup>7</sup>.
- 3.18** While the Commission is willing to engage with applicants through requests for clarification or further information, it will seek to expedite matters at all times, and will not allow uncooperative applicants to delay licensing decisions. If licensing decisions are delayed due to applicants' failure to provide adequate information in good time, those applicants can expect their application to be determined on the 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.

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<sup>6</sup> Section 71 Gambling Act 2005

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

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.<sup>8</sup> More information on the treatment of criminal convictions is set out below.
- 3.31** Once the assessment has been completed for each element of the application then an overall view is taken and marked on the same basis. The fact that one or more elements are 'just adequate' or less does not always mean that the licence will be refused. The overall evaluation is judged on a case by case basis having regard to the importance of the matters to which it relates and risk to the licensing objectives.
- 3.32** When considering the relevance of an offence the Commission will start from the basis that it will accept the information it receives regarding convictions from the 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.
- 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.

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<sup>8</sup> Section 125 Gambling Act 2005

- 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 register<sup>9</sup> on the Commission’s website.

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

## 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 licence<sup>10</sup>.
- 3.47** The Act requires the holders of operating licences to pay an annual fee for their licence, in advance. The first annual fee is due within 30 days of the licence being issued. Subsequent payments will be required before the anniversary date; that is the date of issue of the licence<sup>11</sup>. The Commission will remind licensees about the need to pay their annual fee approximately six weeks before each fee is due. Failure to pay annual fees by the due date may lead to the revocation of a licence.
- 3.48** Holders of personal licences will be required to pay a fee every five years to maintain their licence.<sup>12</sup> Full details of the fee to be paid and any additional information the Commission may require will be requested at least six weeks before the fee is due. Failure to pay the fee will ultimately lead to the revocation of a licence.

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<sup>10</sup> Licence Conditions and Codes of Practice (as amended from time to time).

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

<sup>12</sup> The Gambling (Personal Licence Fees) Regulations 2006 (as amended)

## 4 Compliance

- 4.1 Once an operator or individual holds a licence, the Commission seeks to ensure, through its compliance work, that the licensee remains suitable to hold licences and that they conduct themselves in a way which is consistent with the licensing objectives, the requirements of the Act, and the conditions of their licences and related codes of practice, 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 licences 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 approved 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

### 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 our 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 wider public, and to raise standards in the gambling industry through targeted actions that drive a culture where operators:

- act in a way that minimises the risks to the licensing objectives and reduces gambling related harm
- have due regard to the interests of consumers, treating them fairly and communicating with them in a clear way that allows them to make a properly informed judgment about whether to gamble
- work with the Commission in an open and co-operative way
- are deterred from acting in a way that does not comply with either the letter or the spirit of the regulatory framework set by the Commission.

**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 wider public and 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; or
  - 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. 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 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 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 14 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, or
- the licensee is unsuitable to carry on the licensed activities.

\*varied on 28 August 2018 to ensure consistency with the *Statement of principles for determining financial penalties*

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

### **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.

## The Commission's other regulatory powers

### **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 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). 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 the Commission's 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)<sup>13</sup>. Where the Commission has secured a criminal conviction in respect of an offence under the Act, it will use its powers under POCA and will work with other agencies to take appropriate action to ensure that the proceeds of gambling crime are confiscated.
- 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.

## **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.

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<sup>13</sup> The Commission's powers under POCA do not extend to Scotland.

- 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.

**Gambling Commission June 2017**

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**Keeping gambling fair and safe for all**

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