
STATES OF JERSEY



POLICY STATEMENT FOR REGULATION OF GAMBLING IN JERSEY

**Presented to the States on 16th November 2009
by the Minister for Economic Development**

STATES GREFFE

REPORT

Introduction

This document sets out ministerial policy regarding gambling, licensing and enforcement and the Minister's view on the proposed Gambling Commission's (the Commission) social responsibility functions and licensing objectives in the event the States should pass the draft Gambling Commission Law and associated legislation. The Minister will use this framework to form a basis of written guidance and directions to the Commission under Article 5 of the proposed new law.

Guiding principles

The licensing principles are set out in the Law and are as follows:

- gambling should be regulated in accordance with generally accepted international standards to prevent fraud and money laundering, and should not be permitted to be a source of crime;
- gambling should be verifiably fair to consumers of those services;
- gambling should always be conducted responsibly and with safeguards necessary to protect children and vulnerable people.

In exercising its functions under the Law, the Commission must always have regard to these licensing principles. The Commission will only permit gambling if it considers it reasonably consistent with pursuit of the licensing principles.

This statement will be reviewed by the Minister from time to time and revised after consultation with the proposed Commission when appropriate.

Statutory functions

The Commission's functions will mainly comprise 3 key areas: licensing, compliance and enforcement. In particular, the Commission has the power to:

- determine applications for operating licences and permits, specify the conditions to be contained in such licences and permits, limit the duration of such licences and determine applications to vary or renew operating licences;
- undertake activities for the purpose of assessing compliance with the Law and with any licence or permit condition, code of practice or other provision made by or by virtue of the Law, and also for the purpose of assessing whether an offence is being committed under or by virtue of the Law. To request information from licence holders and to carry out reviews and inspections of any regulated entity;
- take regulatory action against an licence holder following a review including the power to issue a formal warning (notices), to attach, remove or amend a licence condition, to suspend or revoke a licence in relation to offences under the Law.

Development of policies and procedures

This Statement of principles for licensing and regulation is the foundation for the work of the Commission. The Minister expects the Commission to develop a number of policies which build on the principles in this document and govern how Commission will carry out its work, including:

- Licensing, compliance and enforcement policy statement;
- Licence Conditions and Codes of Practice;
- Complaints procedure; and
- Corporate governance framework.

What the Minister expects from applicants for licences

The Minister expects applicants for licences to the Commission will:

- demonstrate to the Commission that they are fit and proper persons to hold such a licence;
- ensure that the activities they plan to carry out will be conducted in a manner which minimises the risks to the licensing principles;
- work with the Commission in an open and co-operative way;
- disclose to the Commission anything which the Commission would reasonably expect to know.

What the Minister expects from licensees

The Minister expects licensees to conduct their gambling operations in a way that does not put the licensing principles at risk or harm the integrity of Jersey. Licence conditions and Codes of Practice will be issued to ensure this.

The Minister expects those holding licences to:

- comply with the Commission's social responsibility directives;
- 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 principles;
- 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 and unambiguous, 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; and
- disclose to the Commission anything which the Commission would reasonably expect to know.

Applying principles to functions

The Minister expects the regulator to apply the following principles in exercising its functions under the Law. These principles have been formulated with a view to ensuring that the Commission regulates gambling in a transparent, accountable, proportionate, consistent and focused manner.

Regulating gambling in the public interest

The Commission will regulate gambling in the public interest, having regard to, and in pursuit of, the licensing principles in the Law. In doing so, the Commission will work with licensees, permit holders 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 of licence holders.

Reviewing regulatory approach

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 or guidance under Article 5).

Consultation

The Commission will consult on changes to its regulatory approach and follow States of Jersey best practice where it is appropriate to do so.

Decision-making processes

The Commission will ensure that licensing and regulatory decisions are properly reasoned and evidence-based and undertaken in a timely manner.

Confirming licensing and regulatory decisions

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); and
- details of any appeal mechanism(s).

Advice to the Minister

Observing Article 7, the Commission will provide the Minister with impartial and professional advice, in keeping with its core objectives, regarding the regulatory impact of any proposals to amend the gambling law or indeed identify any inherent conflicts with its guiding principles arising from its proposed mandate. The Minister will further charge the Commission to supply advice on:

- the incidence of gambling;
- the manner in which gambling is conducted;
- the effects of gambling;
- the regulation of gambling;
- the introduction, amendment or replacement of any enactment that relates to gambling.

The relevance of criminal convictions

The Commission will determine the weight it will attach to convictions for relevant offences and convictions for other offences committed by licence applicants or persons relevant to applications for operating licences, and have regard to the nature and seriousness of the offence and the time which has elapsed since the offence was committed.

Failure to declare convictions

The Commission will attach significant weight to failure by a licence applicant to declare a conviction for a relevant offence or 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

The Commission will provide an opportunity for licence applicants to make oral representations to it in appropriate circumstances.

Minimum burden test

The Commission will ensure that its regulatory approach imposes the minimum burden necessary to promote the licensing principles. The Commission must take into account the regulatory impact on different types and sizes of licence applicant and licence holder and ensure, without compromising key licensing principles, it does not unduly hinder economic progress.

Provision of information

The Commission will keep the gambling industry fully informed of the requirements of the regulatory regime and provide general information, advice and guidance, both on request and on its own initiative, with a view to aiding compliance.

Complaints

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

Adopting a risk-based approach

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

Proportionality

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

Publication of regulatory action

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.

Co-ordinating regulatory action

The Commission will take coordinated regulatory action with States bodies and regulators where it is appropriate to do so.

Co-operation with overseas authorities

The Commission, with the approval of the Attorney General, will assist allied overseas regulators to investigate breaches and offences perpetrated by mutual licensees if appropriate.

Promotion of licensing principles

The Minister expects the pursuance of licensing objectives to reflect those principles set out under the Commission Law, namely:

Gambling should be regulated in accordance with generally accepted international standards to prevent fraud and money laundering, and should not be permitted to be a source of crime.

The Commission will establish licensing, compliance and enforcement processes to prevent gambling from being a source or associated with crime or disorder or being used to support crime.

To enable this objective the Commission will undertake thorough due diligence to ensure:

- only suitable applicants will be granted 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 association with such activity.

The Commission will take a serious view of applicants and licensees who have convictions for relevant offences. Each case will be considered on its merits, but there will be a presumption in favour of refusing an application or reviewing a licence in such cases.

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 and beneficiaries of companies and others relevant to the operation of gambling.

The Commission will provide advice of compliance requisites to licensed operators and potential operators.

The Commission will provide guidance to parish authorities and to law enforcement agencies within Jersey.

The Commission will make available general advice to the public on what activities are permissible without a licence or permit.

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.

The Commission will seek to build and maintain good liaison and working relationships with insular authorities, other allied regulators, regulatory associations and external law enforcement bodies. The Commission will work closely with these bodies and where permissible share relevant information.

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.

Gambling should be verifiably fair to consumers of those services.

The Minister expects that gambling will be fair in the way it is played and offered, that the rules are transparent to players and they therefore know what to expect.

The Commission will ensure that licences are issued only to those who are suitable to offer gambling facilities or work in the industry.

The Commission must ensure that operators provide rules that are fair and clearly understandable. For example, the operator must make plain the probability of losing or winning, as well as presenting the terms and conditions attached to any wager, game or gambling facility.

It will be a requirement for operators to make public the results of events and competitions on which commercial, charitable and social gambling takes place.

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, appropriate technical standards for gaming machines and other equipment used in connection with any licensed activity.

In the event of non-compliance, the Commission will ensure that conditions are imposed that deter future non-compliance on the part of the licence holder.

Gambling should always be conducted responsibly and with safeguards necessary to protect children and vulnerable people.

The Commission will establish and maintain a social responsibility fund dedicated to education, research and promotion of responsible gambling and enable such initiatives for counselling of those harmed by excessive gambling.

The fund will be resourced by the gambling industry primarily by agreed voluntary donation. However, should a shortfall in funding arise, the Minister expects the Commission to exercise powers under the draft Law to impose a levy on the industry to ensure the fund is adequately resourced.

The Commission will work with other bodies such as Gamcare and the Gordon Moody Association to build and maintain knowledge about problem gambling and the measures that may be taken to reduce any prevalence of problem gambling.

The Commission will issue guidance to ensure that gambling premises are presented in such a way that access by children and young persons continues to be prevented.

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.

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 disabilities, or substance misuse relating to alcohol or drugs.

Although the Commission’s role is not intended to extend to treatment or care of those who have gambling problems, the Commission will follow developments in work of that kind.

The Commission will issue codes that include social responsibility requirements, setting out what practical measures operators must take in relation to social responsibility. This will build upon the shadow Commission’s work to date on self-exclusion policies and problem recognition papers.

The Commission will identify good practice in protecting vulnerable people from being harmed by gambling and, where appropriate, place 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 at the greatest risks to the licensing principles. In the event of non-compliance, conditions may be imposed on the licence holder with the intention of deterring future non-compliance.