

Consultation on changes and updates to our Licensing, Compliance, and Enforcement Policy

Overview

The Licensing, Compliance, and Enforcement Policy (the Policy) builds on the Gambling Commission's Statement of Principles and sets out our regulatory policies in relation to:

- Assessing risk
- Licensing operators and key personnel
- Carrying out compliance activities
- Regulatory and criminal enforcement

We amend the Policy from time to time to ensure that it remains clear to operators and other stakeholders, transparent and up to date.

Why your views matter

We'd welcome your views on proposed changes to our Licensing, Compliance and Enforcement Policy, which we last amended in 2017. These include changes which are intended to:

Set out our position on products which appear to require dual regulation

Clarify some of our requirements relating to operating and personal licences

Incorporate our new special measures approach which we have been piloting over the last 12 months

To reflect a number of changes to our process on licence review, suspension and regulatory settlement

Introduction

1 What is your name?

Name

2 What is your email address?

If you enter your email address then you will automatically receive an acknowledgement email when you submit your response.

Email

3 Please indicate which organisation you belong to?

For example, member of the public, gambling operator, financial institution, trade association, charity etc

4 Privacy notice

As part of this call for evidence, we may decide to publish your name and organisation on our website to indicate that you have responded to this consultation. We have asked you to indicate your consent to the Commission publishing your name and organisation to indicate you have responded to this call for evidence.

(Required)

Please select only one item

- I CONSENT to the publication of my name and organisation to indicate I responded to this consultation
- I DO NOT CONSENT to the publication of my name and organisation to indicate I responded to this consultation

Privacy and cookies

<https://www.gamblingcommission.gov.uk/Footer/Privacy-and-cookies.aspx> <<https://www.gamblingcommission.gov.uk/Footer/Privacy-and-cookies.aspx>>

Background

This consultation document is arranged in the same order as the Policy so that our proposed amendments to the Licensing section are first, followed by our proposed amendments to the Compliance and then Enforcement sections.

Proposals- Licensing Changes- Dual regulation products

Dual regulation products

The Commission has been working to finalise our regulatory approach to products that we consider contain financial elements and therefore should be regulated by the Financial Conduct Authority (the FCA).

Our preferred outcome is that this is resolved through legislative change, but this is unlikely to happen before the current Gambling Act Review is concluded. In the absence of legislative change, we propose that we should set out a clear policy position as to how we intend to deal with these products.

As a matter of policy, applications for licences for products that we consider contain an element that should be regulated by the Financial Conduct Authority (the FCA) are likely to be refused. For the avoidance of doubt, this does not affect operators who are currently dual licensed by the Commission and by the FCA.

Over the past few years, we have observed the evolution of these products both from existing licensees and in the form of new applications. These products have contained elements that, in our legal view, should be regulated by the FCA. Some have included extensive use of language and imagery that is most commonly associated with the financial sector.

Our primary consideration is that it should be clear to customers what is licensed by us, what is not licensed by us, and what protections they are afforded (or not afforded) through regulation. By way of example, the gambling sector does not afford consumers with protections such as those offered by the Financial Services Compensation Scheme which can protect customers from losing some of their money if authorised financial services firms go bust.

We conclude that our proposed approach will provide clarity for customers and operators and will mitigate the primary risks of consumer confusion and exposure to financial risk and possible harm.

We propose to set out this policy position within the 'Licensing' section of our Policy by introducing a new subsection under the 'assessment and determination of the application' section as drafted below.

Our proposed changes are shown below and underlined.

Proposal

Financial products

The Commission considers that products whose name, branding, marketing or game rules contain language associated with financial products such as "stock", "share", "index" or "investment" risk harming the second and third licensing objectives, because they may give the impression that they are in the nature of a valuable investment rather than a gambling product. Products which are or may also fall to be regulated by other regulators, for example under the Financial Services and Markets Act 2000, create the risk of uncertainty as to where the regulatory responsibility may lie, so risking harm to the second and third licensing objectives. Accordingly, the Commission will not normally grant operating licences involving such products.

5 The following question is aimed at all respondents with an interest in gambling regulation and how these types of products operate.

Strongly agree Agree Neither agree nor disagree Disagree Strongly disagree

To what extent do you agree with the proposed policy position?
Please select only one item

Please give your reasons for your answer below

Proposals- Licensing Changes- Complete applications

Complete applications

Our Licensing department is responsible for determining through an application process whether an operator can be licensed. As set out in our Statement of Principles for Licensing and Regulation, the Commission expects all applications for a licence to be complete at the point they are submitted. The Commission's policy is to reject incomplete applications and to focus its attention and resource on complete applications. The Commission does not issue refunds for fees. Applicants whose application is refused or rejected as incomplete can submit a fresh (and complete) application with the further appropriate fee.

Despite this, applicants continue to submit incomplete applications which omit necessary information and supporting evidence required to assess the application. It is an applicant's responsibility to ensure their application is complete and that it provides all relevant information within its application. Applicants also request or expect a refund of their application fee.

We conclude that setting out our approach to incomplete applications and refunds in this Policy statement will provide greater clarity for prospective applicants and greater understanding of the implications of submitting an incomplete application with the aim being that no applicant submits an incomplete application. This will help to speed up the licensing process for all involved.

We propose to set out this established policy position for clarity within the Licensing section of the Policy by updating paragraph 3.8 as drafted with the new paragraph below.

Our proposed changes are shown below and underlined.

Proposal

If an application is incomplete or information required to support the application is missing or not provided upon request then, depending on the individual circumstances, the Commission may:

i. reject the application as incomplete;

ii. seek further information;

iii. determine the application based on the information the Commission has available to it. This may affect the decision on whether a licence can be granted.

The application fee is payable on submission of the application. The Commission will not refund the application fee where an application is rejected for any reason, including where the application is rejected as incomplete.

6 The following question is aimed at all prospective applicants or other respondents with an interest in gambling regulation and the licensing requirements.

Strongly agree

Agree

Neither agree nor
disagree

Disagree

Strongly disagree

To what extent do you agree with our proposal that including these amendments within the Policy provides greater clarity for applicants?

Please select only one item



Please give your reasons for your answer below

Proposals- Licensing Changes- Relevant persons

Relevant persons

In exercising its functions under the Gambling Act 2005, the Commission has a duty to promote the licensing objectives (section 22). To do so, the Commission must be satisfied that all persons relevant to an application have been identified and must assess the suitability of all such persons in relation to an operating licence application as well as the applicant entity.

The Commission therefore expects applicants to be open and to co-operate with us in supplying the information we need to assess an application for a licence. This includes providing information about all persons relevant to an application for an operating licence. The Commission wants to provide greater clarity about persons who may be considered relevant to an application by including further examples.

Where applications do not include sufficient information about all relevant persons in their application, or resist our requests for further information, this delays a determination of the application and can result in its refusal.

We conclude that providing further examples of relevant persons will enable prospective operating licence applicants to better understand their responsibilities to identify and inform the Commission of all relevant persons.

We propose to set out these examples by updating paragraph 3.10 as drafted below with the new paragraph below.

Our proposed changes are shown below and underlined. The original text can be viewed by using the dropdown option.

Proposal

Updated paragraph 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. It may also include shadow directors, persons or other entities who are controllers of the applicant and/or those who are its ultimate beneficial owners.

Original paragraph 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.

7 The following question is aimed at all prospective applicants or other respondents with an interest in gambling regulation and the licensing service requirements.

Strongly agree

Agree

Neither agree nor
disagree

Disagree

Strongly disagree

Do you agree that these examples will assist operators in understanding what is a relevant person and providing necessary information?

Please select only one item

Please give your reasons for your answer below

Proposals- Licensing Changes- Use of the licence within a reasonable period

Use of the licence within a reasonable period

As set out in our Statement of Principles for Licensing and Regulation, the Commission will not ordinarily issue licences to applicants who do not need them. We therefore expect a licence to be used within a reasonable period after it is granted.

Operating and personal licence holders do not always use their licence within a reasonable time after the licence is granted. There are some operating licence holders who had never used their licence since it was granted. In some instances, these licences were subsequently surrendered or revoked following a section 116 review of the licence. In addition, applicants do not always clearly set out their need for the licence or when they intend to begin using it, if granted.

To provide clarity for applicants and to minimise the risk of a section 116 review with the effort and expense involved for both a licensee and the Commission, we want to make clear that part of our assessment of the application includes whether the applicant is likely to use the licence within a reasonable period.

We conclude that to include this additional information in the Policy will provide greater clarity for applicants about the Commission's expectations.

We propose to reinforce this position by adding to the Policy a new paragraph after current paragraph 3.10 as drafted below.

Our proposed changes are shown below and underlined.

Proposal

New paragraph for insertion after current paragraph 3.10

In considering operating and personal licence applications, the Commission will include assessment of whether an operation licence applicant is likely to provide facilities for gambling within a reasonable period or a personal licence applicant is likely to be employed in a role that requires a personal licence within a reasonable period

8 The following question is aimed at all prospective applicants or other respondents with an interest in gambling regulation and the licensing service requirements.

Strongly agree

Agree

Neither agree nor
disagree

Disagree

Strongly disagree

To what extent do you agree with our proposal to add a statement setting out our expectations that licences are used within a reasonable period of time of granting?
Please select only one item



Please give your reasons for your answer below

Proposals- Licensing Changes- Suitability

Suitability

In exercising its functions under the Gambling Act 2005, the Commission has a duty to promote the licensing objectives (section 22). To do so, the Commission must have all the information we need to assess the suitability of all such persons in relation to an operating licence application as well as the applicant entity.

The Commission expects applicants to be open and to co-operate in supplying the information we need to assess an application for a licence. For the avoidance of doubt, the Commission wants to make it clearer to applicants how we consider the suitability of the applicant and make it explicit that we will look beyond the applicant entity. We also want to make clear about the matters we consider in respect of each of the elements of suitability.

Despite guidance within our online application services and on our website, some applicants do not fully understand how we will consider each element of suitability and that we are obliged to look beyond the applicant itself to assess suitability.

We often have to request further information in relation to some of these elements and these requests are sometimes met with resistance. This delays a determination of the application and can result in a refusal of the application.

We conclude that updating this section as set out will enable prospective operating licence applicants to better understand their responsibilities to identify and supply the Commission with all the information it needs to assess suitability at the point the application is submitted.

We propose to provide greater clarity by updating paragraphs 3.11; 3.22; 3.27 and 3.28 as drafted below.

Our proposed changes are shown below and underlined.

Proposals

Updated paragraph 3.11

When considering the suitability of an applicant the Commission will look beyond the applicant itself and may for example consider those connected with the applicant, such as:

persons relevant to an application by reason of their being likely to exercise a function in connection with, or to have an interest in, the licensed activities;

shadow directors;

persons or other entities who are controllers of the applicant;

ultimate beneficial owners.

In respect of the applicant and others connected with the 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 – This includes the applicant's transparency in relation to the beneficial ownership of the applicant and those who finance and profit from its operation.

Finances – For operating licences this will include the resources likely to be available to carry out the licensed activities and the legitimacy of the source of the capital and revenue finance of the operation.

Integrity – Honesty and trustworthiness. Willingness to comply with regulatory responsibilities, uphold the licensing objectives and work cooperatively with the Commission.

Competence – Experience, expertise, qualifications, and history of the applicant and/or person(s) relevant to the application. Ability to comply with regulatory responsibilities, uphold the licensing objectives and work cooperatively with the Commission.

Criminality – criminal record of the applicant and/or person(s) relevant to the application

Updated paragraph 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. This requirement is without prejudice to paragraph 3.13 above. If the beneficiary of any business is a Trust then the Commission will want to know who the beneficiaries of that Trust are.

Similarly, where a person or entity holds shares as a nominee the Commission will want to know who the true owners are.

Updated paragraph 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. This involves an assessment of an applicant's willingness to comply with regulatory responsibilities, uphold the licensing objectives and work co-operatively with the Commission.

Updated paragraph 3.28

The Commission will take up references and may review the CVs or employment history 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. This involves an assessment of an applicant's ability to comply with regulatory responsibilities, uphold the licensing objectives and work co-operatively with the Commission.

9 The following question is aimed at all prospective applicants or other respondents with an interest in gambling regulation and the licensing service requirements.

Strongly agree

Agree

Neither agree nor
disagree

Disagree

Strongly disagree

To what extent do you agree with the amended wording on suitability?

Please select only one item



Please give your reasons for your answer below

Proposals- Licensing Changes- Financing arrangements

Financing arrangements

In exercising its functions under the Gambling Act 2005, the Commission has a duty to promote the licensing objectives (section 22). To do so, the Commission must have all the information it needs to assess the suitability of the applicant entity and connected persons.

We conclude that adding this new paragraph will make clear that the onus is on the applicant to fully satisfy the Commission on these points. Not doing so may risk a refusal of their application, or a delay in determining the application outcome.

As part of our duty to promote the licensing objectives, we will only grant a licence if we are satisfied that an applicant can uphold the licensing objectives. A key part of assessing this in relation to an operating licence application is being satisfied that the business will not be financed by the proceeds of crime, nor will its profits be used to finance criminal activity. Whilst this position is implicit, the Commission wants to make its position explicit.

The Commission still regularly receives applications for operating licences that do not include full and open information as to the source of funding for the operation, nor full and frank information about all those relevant persons connected to an applicant.

We therefore have to request further information, and this is sometimes resisted. This delays a determination of the application and can result in a refusal of the application.

We propose to provide greater clarity by introducing, after current paragraph 3.13, the paragraph drafted below.

Our proposed changes are shown below and underlined.

Proposal

New paragraph to be inserted after current paragraph 3.13

The Commission will not grant an operating licence until it is fully satisfied that the operation will not be financed by the proceeds of crime and that profits from the operation will not be used to finance criminal activity. To that end, applicants will be asked to provide information and evidence as required both as to the source of finance of the proposed operation and as to the identity of those connected to the applicant as specified in paragraph 3.11 above.

In addition, for the same reason, we propose to introduce, after current paragraph 3.25, the paragraph drafted below (new text is underlined):

New paragraph to be inserted after current paragraph 3.25

As stated above, the Commission will also wish to be satisfied as to the sources of the applicant's finance to satisfy itself that such funds are not tainted by illegality.

10 The following question is aimed at all prospective applicants or other respondents with an interest in gambling regulation and the licensing service requirements.

	Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree
To what extent do you agree with the proposed new wording at paragraph 3.13? <i>Please select only one item</i>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

To what extent do you agree with the proposed new wording at paragraph 3.25? <i>Please select only one item</i>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
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Please give your reasons for your answers below

Proposals- Licensing Changes- Updating the Commission

Updating the Commission

The Commission wants to add examples of the types of changes and matters that are important for a licensee to monitor and report to the Commission because of the potential impact that not reporting these may have on a licensee.

Despite these matters being set out in Licence Conditions and Codes of Practice and on the Commission’s website, some licensees are not reporting these changes, submitting regulatory returns, or submitting variation/change of control applications in the required timescales. Failure to do this may indicate a lack of competence or willingness to cooperate with the Commission which may bring into question a licensee’s continued suitability to hold a licence.

We conclude that adding examples to this paragraph will highlight to licensees the importance of these matters and, by extension, the importance of reading and understanding their licence conditions thoroughly and putting in place mechanism to comply.

We propose to update paragraph 3.46 as drafted below as drafted below with the proposed changes.

Our proposed changes are shown below and underlined.

Proposal

Updated paragraph 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. Failure to do so may result in regulatory action being taken. This includes, but is not restricted to:

Changes in ownership/control

Submission of timely and accurate regulatory returns

Submission of timely variation application if a licensee is likely to exceed the fee category limit of its licence

11 The following question is aimed at all prospective applicants or other respondents with an interest in gambling regulation and the licensing service requirements.

Strongly agree Agree Neither agree nor disagree Disagree Strongly disagree

To what extent do you agree with the revised wording at paragraph 3.46?
Please select only one item

Please give your reasons for your answer below

Proposals- Licensing Changes- Minor updates

Minor updates

There have been some minor amendments to our internal processes and procedures which we want to reflect in the Policy.

These are:

- Change to paragraph 3.6 – operating licence and personal licence applications must be made through our online application services rather than on manual application forms. This amendment is proposed for clarity and to align the policy statement with the changes made to our application services
- Change to paragraph 3.14 – whilst section 74(1) of the Gambling Act 2005 refers to ‘rejecting’ an application, in practice and for reasons of using more commonly understood language, letters issued by the Commission in relation to potential ‘rejections’ of an application refer to ‘refusing’ the application. This amendment is proposed for clarity and to align the policy statement with the language used by the Commission in its correspondence with applicants
- Change to paragraph 3.20 – The Commission no longer requires, as a matter of course, applicants to supply photographs. This amendment is proposed for clarity and to align the policy statement with the changes made to our application services
- Change to paragraph 3.23 – The Commission requires an understanding of the structure of a company whether it is UK-based or based overseas. This amendment is proposed for clarity
- Change to paragraph 3.45 – The Commission does not issue licences by hard copy. This amendment is proposed for clarity and to align the policy statement to reflect the way we issue licences.

We propose to make minor ‘tidying up’ amendments to this statement to reflect these changes by making the following changes as drafted below.

Our proposed changes are shown below and underlined. The original text can be viewed by using the dropdown option.

Proposals

Updated paragraph 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 on our website and online application services.

Updated paragraph 3.14

On considering an application for a licence the Commission is required to: grant it; refuse it; or grant it in respect of one or more of the specified activities and refuse 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.

Updated paragraph 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.

Updated paragraph 3.23

The Commission requires a full description of the company structure and would satisfy ourselves that other companies in the structure are either listed companies or that we knew of nothing untoward about them. We might carry out checks with overseas regulators in respect of overseas companies.

Updated paragraph 3.45

If the applicant is successful then a licence will be issued by email. For operating and personal licences relevant details of the licence will be published in the public register on the Commission’s website.

Z

12 The following question is aimed at licence applicants and licensees with an interest in the Licensing service.

Strongly agree

Agree

Neither agree nor
disagree

Disagree

Strongly disagree

Do you agree with the proposed changes to the Policy to reflect our service?

Please select only one item

Please give your reasons for your answer below

Proposals- Compliance Changes- Remote assessments

Remote assessments

The Commission's Compliance team is responsible for monitoring and assessing the performance of operators against the Licensing Objectives and the LCCP. For many years the Compliance team has conducted a significant part of its work through visiting gambling premises. More recently, it has moved to conducting monitoring and assessment remote operators through video conferencing and other technology, and it is likely that this approach will be extended to some aspects of assessment of land-based operators.

In our experience this method of monitoring and assessing works well and for all involved in the process it can save on the time and expense of travelling to different locations for the assessment process.

Whilst the provisions of the Gambling Act allow us to conduct assessment, we want to be transparent about the way in which we conduct them.

We propose to amend the Policy to include a new section, under the 'requests for information' paragraphs, as shown below.

Our proposed changes are shown below and underlined.

Proposal

Remote compliance assessments

The Commission may conduct remote compliance assessments for the purposes of determining whether activities are being carried on in accordance with the conditions of the operator's licence or determining the suitability of the licensee to carry on the licensed activities. Such assessments may be conducted using video conferencing platforms such as Skype. During such assessments the Commission may request sight of documents and records held by the licensee, including customer records and the audit trail in relation to customer accounts.

13 To what extent do you agree with the proposed amendment to the Policy to reflect our approach to remote assessments?

Strongly agree

Agree

Neither agree nor
disagree

Disagree

Strongly disagree

To what extent do you agree with the proposed policy amendment?

Please select only one item

Please give your reasons for your answer below

Proposals- Compliance Changes- Assessment framework

Assessment framework

In paragraph 4.19 of the Policy, we set out a description of a framework that Compliance officials use during an assessment to judge levels of compliance. The framework is set out as a series of qualitative judgements. In practice, Commission officials do not use this framework to express their initial judgements to operators and instead focus on the likely outcome of the assessment or recommendation arising from it. It is therefore confusing to include within the Policy and to create the impression that operators may be assessed and judged in these ways.

Nevertheless we consider it helpful that the framework provides an indication of what non-compliant/just compliant and compliant looks like, so we propose to amend the wording at paragraph 4.19 to align with the descriptions used within it.

Our proposed changes are shown below and underlined. The original text can be viewed by using the dropdown option.

Proposal:

4.19 In carrying out this assessment, the Commission will use the following framework :

Serious failings

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.

Improvement required

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.

Compliant

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.

Original paragraph 4.19

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.

14 To what extent do you agree with the proposed amendments to the assessment framework?

Strongly agree

Agree

Neither agree nor
disagree

Disagree

Strongly disagree

To what extent do you agree with the amended assessment framework?

Please select only one item

Please give your reasons for your answer below

Proposals- Compliance Changes- Special Measures

Special measures

Over the past 12 months we have been piloting the use of a new measure, "Special measures" to bring operators to compliance at pace. We have used this process in situations where, based on failings identified during a compliance assessment, previously we might have placed an operator into s116 review.

The special measures process involves the operator working with the Commission and using a closely managed and monitored timetable to achieve compliance over a relatively short period of time. The process works well where operators are committed to making what can be significant changes to their processes and procedures within a tight timeframe.

The benefits of the process are clear; the operator quickly achieves compliance and both operator and Commission avoid the cost and time involved in a s116 review.

We now want to formalise the process within our regulatory toolkit and to do so, we propose to add a new paragraph to the Policy which sets out the place and purpose of the special measures process.

Our proposed changes are shown below and underlined.

Proposal

Special measures

4.22 If serious failings are revealed during or as a result of a compliance assessment, then the Commission may decide that it is appropriate to place the licensee into Special Measures. The effect of Special Measures is that the licensee will be invited to submit and agree an urgent action plan to rectify the regulatory failings identified. This may include divestment of any financial benefits derived from the failings. If the licensee fails to agree an action plan, or fails to implement the agreed action plan, the Commission is likely to proceed to review the licence. Compliance with the action plan does not prevent the Commission from reviewing the licence in any event, but such compliance will be treated as a mitigating factor. Where the licensee has fully complied with the action plan, it may request release from Special Measures. The Commission will consider such a request following a further compliance assessment.

15 To what extent do you agree with our proposal to add the use of the special measures process to our regulatory toolkit?

Strongly agree

Agree

Neither agree nor
disagree

Disagree

Strongly disagree

To what extent do you agree with our proposal to add the use of the special measures process to our regulatory toolkit?

Please select only one item



Please give your reasons for your answer below

Proposals- Enforcement Changes- Commencing a review of an individual licence

Commencing a review of an individual licence

During a section 116 review, the Commission is obliged to properly consider and take account of all information revealed during that review and to provide licensees with an opportunity to make representations. Whilst every attempt is made to do this in one act, there may be times when issuance of further preliminary findings is required particularly where, in responding to previously issued findings, new evidence is introduced. The Commission considers that until an outcome is reached, the investigation stage of a review remains live.

During a licence review, the Commission collates and assesses a significant amount of information to ensure it is in possession of all relevant facts on which to base its findings. This includes requesting additional information from the licensee and if required, third parties. This information can lead the Commission to either discount or change its position on elements of the review or include elements of which it was unaware when the review commenced.

It is essential that within a review, all relevant matters, mitigation, remedial actions, and aggravating factors are assessed, considered and representations gained. This ensures fairness to the licensee in being able to present their response to our conclusions before an outcome is obtained.

We therefore propose to add a new paragraph 5.10 and 5.20 of the Policy.

Our proposed changes are shown below and underlined.

Proposal

5.10 The process of review may itself reveal facts or matters requiring investigation. Accordingly, the Commission will take a flexible approach to the procedure to ensure that all relevant facts and matters are investigated, and that the licensee has a full opportunity to make representations in relation to the review.

5.20 While in most cases, the Licensee's representations will enable the Commission to proceed to a determination, in some cases the Licensee's representations may raise further questions for the Commission. This may be because the licensee has not adequately replied to the preliminary findings letter or because its representations raise further questions requiring investigation. This may lead to further investigations by the Commission, as set out at paragraph 5.10 above, which may result in a further consolidated preliminary findings letter. In such a case, the Commission will afford the Licensee the opportunity to make further representations before moving to consider its determination.

16 To what extent do you agree with the proposed amendments?

Strongly agree Agree Neither agree nor disagree Disagree Strongly disagree

To what extent do you agree with the proposed amendment to paragraph 5.10? <i>Please select only one item</i>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
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To what extent do you agree with the proposed amendment to paragraph 5.19? <i>Please select only one item</i>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
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Please give your reasons for your answer below

Proposals- Enforcement Changes- Financial penalties

Financial penalties

To enable the Commission to sufficiently assess the affordability quantum of a proposed financial penalty, it should be able to consider the resources available to the licensee and any parent or group company as well as the ultimate beneficial owner.

The rationale for this proposal is to clearly set out to licensee's at section 121 of the Gambling Act 2005 section 7 (c) in respect of what we should consider before imposing a financial penalty i.e. 'the nature of the Licensee including in particular his financial resources'.

We propose to amend the wording within the Policy to provide further clarity on our approach. This will ensure that licensees are aware of the scope of information the Commission may request, as it considers an appropriate financial penalty. In the event the Licensee will not provide the information, the inference should be that it is sufficiently resourced to meet the penalty.

We therefore propose to add a new paragraph to this section after 5.26.

Our proposed changes are shown below and underlined.

Proposal

Whether a financial penalty is to be imposed following a review or without a review having taken place, the Commission may request financial information regarding the financial resources available to a licensee, including but not limited to its own resources and those of any parent or group company or ultimate beneficial owner. In the absence of sufficient information, the Commission will infer that the licensee has the resources to pay such financial penalty as is appropriate in the circumstances of the case.

17 To what extent do you agree with this proposal?

Strongly agree

Agree

Neither agree nor
disagree

Disagree

Strongly disagree

To what extent do you agree with this proposal?

Please select only one item

Please give your reasons for your answer below

Proposals- Enforcement Changes- Suspension

Suspension

We recognise the impact that the suspension of an operating licence can have upon a licensee, and that challenges to regulatory action can be complex and resource impactful. Going forward, if a licence suspension is challenged, the Commission will list the matter for hearing before the regulatory panel as soon as reasonably practicable.

Whilst the arrangements that go into the organisation of a regulatory panel hearing mean that it is not possible to provide a definitive time period for when this will occur, we propose to add new wording to paragraph 5.27 of the Policy to reflect our commitment to expediting these hearings wherever possible.

Our proposed changes are shown below and underlined.

Proposal

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.

A licensee who wishes to challenge an interim suspension may seek a hearing before a Regulatory Panel of Commissioners. In such a case, the Commission will list the matter for hearing as soon as reasonably practicable.

18 To what extent do you agree with the proposed amendment to paragraph 5.27?

Strongly agree

Agree

Neither agree nor
disagree

Disagree

Strongly disagree

To what extent do you agree with the amended paragraph?
Please select only one item

Please give your reasons for your answer below

Proposals- Enforcement Changes- Regulatory Settlements

Regulatory settlements

As outlined in the Commission's Enforcement and Compliance Report 2020, increasingly there are too many occasions where settlement proposals are made at a late stage of our investigation process, or approached as if a licence review is a commercial dispute to be negotiated.

Our Statement of Principles for Licensing and Regulation makes it clear that settlements are only suitable where a licensee is: open and transparent, makes timely disclosures of the material facts, demonstrates insight into apparent failings, and is able to suggest actions that would prevent the need for formal action by the Commission.

Settlements are only intended to be accepted in cases where all these criteria apply, and so that we can expedite the delivery of appropriate regulatory outcomes. We want to provide greater clarity for licensees in this this area so that regulatory settlements reset to their original purpose i.e. to expedite the delivery of an appropriate regulatory outcomes.

We therefore propose to add a new paragraph to this section after 5.33.

Our proposed changes are shown below and underlined. The original text can be viewed by using the dropdown option.

Proposal

The process of regulatory settlement is intended to produce a rapid and fair disposal of a case. Accordingly, regulatory settlements should be offered at an early stage in the process. The Commission will not normally accept offers of regulatory settlements offered after the licensee has made representations on the Commission's preliminary findings.

19 To what extent do you agree or disagree with this proposal?

Strongly agree

Agree

Neither agree nor
disagree

Disagree

Strongly disagree

To what extent do you agree with the proposal?
Please select only one item

Please give your reasons for your answer below

Feedback

20 How did you hear about this consultation?

Please select only one item

- Social media
- Word of mouth
- Gambling Commission website
- Broadcast (News, TV, or radio)
- Newspaper (print or online)
- Website (non-government)
- Other

If you answered other, please specify

21 Overall, how satisfied were you with our online consultation tool?

Please select only one item

- Very satisfied
- Satisfied
- Somewhat satisfied
- Disappointed

How could we improve this service?