



Policy Statement for the Conduct, Regulation and Licensing of Gaming Machines in Licensed Bookmakers (Type I and II)

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Introduction

This document sets out the Commission's policy for the regulation under licence of Gaming Machines Type I and II in Jersey bookmakers, the relevant permissions, responsibilities and appropriate enforcement. It is published in accordance with Article 9 of the Gambling (Jersey) Law 2012 (the Law). In publishing this policy, the Commission sets out the circumstances under which it will generally grant or refuse an application for a Licence and the conditions that will apply to it.

Guiding Principles

The guiding principles are set out in the Gambling Commission (Jersey) Law 2010 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 that Law and the Gambling Law, the Commission must always have regard to these principles. The Commission will, therefore, only permit gambling or services to commercial gambling operators if it considers it reasonably consistent with pursuit of the guiding principles.

This statement will be reviewed by the Commission from time to time and revised after consultation with relevant persons and organisations as appropriate.

Statutory Functions

The Commission's functions with regard to Gaming Machines Type I and II comprise three key areas: applying Licences, compliance and enforcement. In particular, the Commission has a duty to:

- determine applications for Licences, specify the conditions to be contained in such Licences, and determine applications for variation or renewal;
- assess compliance with the Law and with any Licence condition, code of practice or other provision included by virtue of the Law, and request information from Licensees as necessary;
- take regulatory action against any Licensee failing to comply with the conditions stated in this document, or in relation to offences under the Law.

Context

Commercial gambling means a business which contracts directly with a customer and for profit. Gaming Machines Type I and II directly offer gambling services *to* and contracts *with* the public in the form of a customer/punter relationship and is therefore commercial gambling under this definition.

Policy: Gaming Machine Type I and II Licence

Only licensed bookmakers may apply to operate type I or type II gaming machines. For the purposes of this policy, a Gaming Machine includes any game, machine or device that accepts money or money's worth and which after play, operation or determination offers a prize or prizes in money or money's worth based on the use of chance, or skill and chance combined. The Commission reserves the right to alter this definition.

This policy is governed by the published Code of Practice for Gaming Machines Type I and II that stipulates the conditions that must be met prior to any machine being available to customers to play. The code also places a restriction on the number of physical cabinets that can be sited within single premises.

Prior to any game being made available for play, it must be independently tested, and authorised by the Commission.

The Commission requires all licensed bookmakers on the Island to obtain a Gaming Machine License per physical machine cabinet if they wish to offer this type of gambling to members of the public.

Exclusions

These types of gaming machine may only be operated within a premises operated by a licensed bookmaker. A separate licence under this Article is still required for each gaming machine as well as the bookmakers licence.

Self-Supply

A business may self-supply gaming machines, but they must be Jersey-based and demonstrate sufficient knowledge of the industry for the Commission to satisfy itself that the business will comply with the relevant conditions and standards. This arrangement would not require an ancillary permit unless the business rented out any of its machine stock to another business.

Importation of Machines

The Commission may request gaming machines be subject to independent testing to verify that they are operating in accordance with the Commission's guiding principles. It would be disproportionate to expect machines already in general use in Jersey to be tested or re-tested, but it is important to establish a link between importation and the requirement to have a testing certificate. For the sake of clarity, proof of testing also applies to imported software and upgrades to existing games. Ordinarily the burden for testing compliance rests with the importer / supplier.

Applications

All Licences are subject to an application process. Certain conditions apply to the grant of a Licence and remain conditions after it has been granted. In considering the application for any Licence the Commission must ensure that in granting it there is no contravention of the Guiding Principles (as outlined above).

It is therefore for the applicant to satisfy the Commission that they are fit and proper persons to hold a Licence and that business is conducted in such a manner as would not bring the Island into disrepute.

Applying for a Licence

Applications must be made on forms provided by the Commission. These forms may require the applicant to supply supporting information to enable the Commission to consider whether the applicant meets the criteria for the grant of a Licence.

Request for further information

The Commission may at its own discretion request further information or documentation from the applicant in determining whether to grant a Licence. It should be noted that the Commission may also by written notice require the applicant to provide a report by an auditor or accountant, or other expert or qualified person.

Change of circumstances during the application process

A duty is placed on the applicant to inform the Commission in writing of any change pertinent to an application. For instance if the supplier has changed or the operator is subject to criminal or civil proceedings arising after the application was made. Any intervening circumstances would understandably alter the veracity of the original statements made to the Commission by the applicant. Once the applicant is aware of any material change it must inform the Commission as soon as reasonably possible and before the Licence is issued; failure to do so may result in the revocation of that Licence on the grounds of providing false or misleading information.

Withdrawing an Application

It remains the right of the applicant to withdraw the application at any time before the Gaming Machine Licence is granted or refused. The applicant must supply a written notice to the Commission stating the intention to withdraw the application.

Grant of a Licence

An applicant must provide the Commission with location details, machine details, machine supplier, games definitions and certification. The Commission accepts that applicants are licensed bookmakers and as such is cognizant that company structure and ultimate beneficiaries required by Article 12 would have been submitted as part of the Bookmakers Licence application.

It should be noted that the Commission is not compelled to award a Licence just because someone has applied for one.

The Commission may only grant a Licence if it has examined and is satisfied with the applicant's:

- integrity,
- competence,
- financial standing,
- structure and organisation.

The applicant may then be considered a fit and proper person to facilitate gambling under the Licence.

The Commission is also bound to determine whether the grant of the Gaming Machine Licence will not be harmful to the reputation and integrity of Jersey in gambling matters along with commercial and financial matters.

Testing

The Commission also reserves the right to approve and appoint an independent person to test each item of equipment or device that will be used in relation to the gambling to ascertain and confirm the gambling equipment complies with the guiding principles and is in compliance with any subsequent (future) relevant code of practice, if appropriate.

Matters the Commission must take into account

Without limiting the matters that the Commission may take into account in determining whether to grant a Licence to an applicant, the Commission must take into account the following matters:

- financial standing e.g. the ability to meet and honour any promoted odds;
- whether the applicant has at any time been subject to adverse findings, in either the provision of gambling services or gambling related services by a law enforcement agency situated in a country or territory outside Jersey.
- whether the applicant has at any time (whether or not in relation to the application) in any case where information was required under Gambling (Jersey) Law 2012:
 - failed to provide any information, or
 - provided to the Commission information which was untrue or misleading in any material particular.

Compliance History of Licensees

The compliance history of the Licensee will be reviewed when considering any application for a new Licence. These matters are prescribed in the Law and are as follows:

In reaching a decision on whether to grant a Licence the Commission must make certain that the applicant business has sufficient connection with Jersey to enable it to take effective enforcement action against the business if so required e.g. the operation of a Gaming Machine Licence is limited to Jersey Licensed Bookmakers.

In examining the application the Commission must consider whether the proposed gambling activities correspond to the correct Licence and regulatory regime or whether another form of permission would more properly fit the gambling proposition. For the exclusion of doubt a Gaming Machine Licence only applies to the operation of that particular form of gambling, there can be no commercial diversification without approval from the Commission.

The Commission must consider whether the applicant has at any time failed, in any material respect, to comply with a condition on a current or previous Licence, a code of practice or direction given to the person at any time.

The Commission must consider whether:

- at any time a direction has been given on the basis of any default by the applicant;
- an injunction has been issued under Article 36(2) to the applicant;

- an order has been made under Article 36(4) on the basis of any contravention by the applicant,
- the applicant has been the subject of an order for intervention under Article 37,
- a Licence held by the applicant has been revoked under Article 38, or
- the applicant has been served with a final notice of a civil financial penalty under Article 39.

Convictions

Remembering that one of the Commission's key licensing principles is to keep gambling crime free, this necessarily extends to all applicants for Licenses. The Commission must take into account any convictions, and this includes transgressions of the business or any person employed by or associated with the applicant business. Convictions include:

- an offence under the Gambling (Jersey) Law 2012, Gambling (Ancillary Services and Miscellaneous Provisions)(Jersey) Regulations 2012 or the Gambling Commission (Jersey) Law 2010,
- an offence under the anti-money laundering and counter-terrorism legislation;
- an offence under the Data Protection (Jersey) Law 2018, the Supply of Goods and Services (Jersey) Law 2009 or the Distance Selling (Jersey) Law 2007;
- an offence of perjury or conspiracy to pervert the course of justice, or any other offence involving fraud or other dishonesty,
- any similar offence, under the law of a country or territory outside Jersey.

Adequate Systems

The applicant must make an undertaking that the equipment it operates is adequate for the purposes for which it is hired or bought and on request provide any proof of testing carried out on this equipment. This is to ensure the applicant's equipment facilitates gambling in accordance with the guiding principles and in compliance with any relevant code of practice.

Applying for a New Licence

A Licence lasts for 5 years and if an application is received for a Licence before the expiry of another Licence for the same activity from the same firm, the Commission may not necessarily insist on repeating a full due diligence investigation if that firm has a proven compliance record. In considering the application for a new Licence, the Commission must consider whether it holds any relevant information previously obtained by it in connection with the expiring licence; and it may rely on that information unless it has any reason to believe that the information may not still be current.

Licence Conditions: Mandatory Conditions

It should be noted that some of the Conditions applied to a Gaming Machine Licence will, necessarily, mirror some of Conditions applicable to a Machine Suppliers Permit. Rather than duplication, dual responsibility for some matters is imposed to ensure the supplier educates the supplied; the Commission considers this step a proportionate requirement as current machine suppliers are mature businesses, and their current or future clients will benefit from the suppliers' experience and ultimately guidance in relation to the machine types they may offer and the requirements accompanying public game play.

It is a condition that the licence holder should report to the Commission any evidence they have of machine tampering in the venues where they are sited. Machine tampering includes criminal damage, robbery and evidence of cheating (actual and attempted). The Commission also requires the licence holder to report any police action in relation to the machines they supply.

The Licence Holder must not advertise to or at children which for the purpose of this Licence means under 18 year olds.

It is a condition that the Licence Holder complies with published advice on the advertising of gambling in general.

Mandatory Conditions – Right of Entry and Inspection

It is a condition of the Licence that the Licence Holder must co-operate with the Commission to enable it to carry out reasonable routine examinations, including occasional examinations without advance notice.

In connection with any routine examination, it is a condition that the Licence Holder must:

- supply to the Commission information in a format and at times specified by the Commission;
- provide answers to questions asked by the Commission;
- allow officers or agents of the Commission to enter any premises occupied or used by the licence holder for the conduct of offering a gambling service or for any related activity (e.g. warehouse, workshop, depot, offices);
- allow officers or agents of the Commission, while on the premises:
 - to search the premises,
 - to examine equipment on the premises,
 - to take possession of any information or documents on the premises or accessible (electronically or otherwise) from the premises,
 - to take, in relation to any such equipment, information or documents, any other steps that may appear to be necessary to preserve them or prevent interference with them,
 - to require any person present on the premises to provide an explanation of such equipment, information or documents, if the person appears to be in possession of relevant information,
 - to take copies of, or extracts from such documents.

Mandatory Conditions – Change of ownership, shareholding, directors

It is a condition of the Licence that the holder must at the request of the Commission, at any reasonable time and whether or not in connection with a routine examination, provide the Commission with the information that the Commission may reasonably require in relation to the control, by its owners, executive officers and directors, of any body corporate constituting the licence holder, or of any holding body or subsidiary of the Licence Holder.

It is a condition of the Licence that the holder must inform the Commission of the incidence of material change.

It is a condition of the Licence that the holder informs the Commission of an ownership change at 5% or above. The Licence Holder must also inform the Commission of the addition or removal of directors for any reason including any appointments, dismissals, resignations or deaths.

The Commission is aware that this condition is also imposed as part of the Bookmakers Licence and as such only requires the licensee to make a single submission to cover the Gaming Machine reporting requirement.

Mandatory Conditions – Duty to Provide information

It is a condition that the Licence Holder must inform the Commission of any adverse information, if the Licence Holder has any reasonable cause to believe the information is relevant to the Commission's functions under the Law or Regulations in relation to the Licence Holder and that by withholding this information it is likely to result in the Commission being misled as to the Licence Holder's activities.

Unless in cases where the information provided is found to be false, it should be noted that any Statement made by the Licence Holder under this condition may not be used by the prosecution in evidence against the licence holder in any criminal proceedings. However, nothing prevents the Commission from using this statement for the purpose of pursuing its functions including the imposition of a civil financial penalty.

Supplementary Conditions (Compulsory Matters)

A condition on the Licence will define what services are provided.

Social Responsibility

Social Responsibility is a core licensing consideration for the Commission and this extends to machine operation. It is a condition that the gaming machines and gaming equipment the Licence Holder operates contain the following information:

- Whereabouts of assistance for excessive gambling – therapy providers and helpline numbers,
- Information relating to chances of winning and losing, what may be lost and what may be won,
- The identity of the machine supplier.

Staff

It is a condition of every Licence that the Licence Holder must not allow an individual to perform a function, engage in employment or hold a position, if the Licence Holder knows or can reasonably be expected to know that such performance, engagement or holding is in contravention of a direction that makes a requirement referred to in Article 35(2)(c). Namely, require any individual to:

- not perform a specified function (or any function at all) or,
- not engage in specified employment (or any employment at all) or
- not hold a specified position (or any position at all) in the business of,

a specified licence or any Licence Holder.

Current Address

It is a condition that the Licence Holder provides and maintains a current address at which the Licence Holder agrees to accept service of any documents under the Law, and which is to be taken to be that person's proper address for the purpose of Article 7 of the Interpretation (Jersey) Law 1954. A change of address must be notified to the Commission within five working days.

Records, Accounts and Annual Statements

It is a condition that Licence Holders submit to the Commission the following records:

- Where machines are supplied: type of place/address of premises/ owner or manager's name (**Timing of Notification**: On application for a Licence; no later than 28 days after agreeing/signing new contracts or termination of contracts)
- Types of machines supplied: numbers and description of terminals or cabinets and the content (software) supplied (**Timing of Notification**: On application for a Licence; no later than 28 days after installation and removal)
- Records of machine play and payout (**Timing of Notification**: within 14 days of a formal request and/or 28 days before annual Licence fee is due)
- Provide access to a centralised monitoring system capable of replaying information in relation to game play.

Signage and Licensing

It is a condition of a Gaming Machine licence to make all staff or relevant persons aware of the requirement to apply and hold a gaming machine licence to host any equipment or gaming machine captured by the Commercial Licensing Regime. In relation to all gaming machines, prohibitive signage must be provided on or for those games or cabinets stating that they are only suitable for adults to play.

General Condition

It is a condition of all Licences that the holder should inform the Commission of any occurrence, incident or event that impacts upon their suitability to hold a Licence or which the Commission might ordinarily expect to be made aware of.

Grounds for refusal or revocation of a Licence

In line with the matters the Commission *must* consider when assessing an application, the following matters – which are not exhaustive - may compel the Commission to revoke or refuse an application for a licence:

- the applicant has held a Licence previously and proved to be incompetent or negligent or dishonest;
- the Licence Holder fails to pay fees;
- the Licence Holder or applicant produced misleading and inaccurate information when applying for a Licence or subsequently under the reporting conditions applied to a Licence;
- the Licence Holder has breached such conditions of a Licence without taking remedial action required and set out in notices from the Commission;
- on application the person is found not to be bona fide;
- the Licence Holder requests it;
- Jersey's reputation is imperilled;
- operating untested gambling products,

- siting machines in a venue not reported to the Commission,
- knowingly siting machines not permitted in certain venues,
- if the Commission has issued a direction under Art.16(4) to the operator (refer to Staffing heading).

The Commission must articulate reasons for refusing and revoking a Licence in line with Article 43 and the right of appeal must be applied under Article 45.

Article 43: Notification of decisions

In respect of Licences the Commission must notify the applicant or holder of a Licence (where applicable) of:

- the decision to grant a Licence and the conditions applied to that Licence (duties clarified by a statement/policy produced under Article 9),
- the decision to refuse a Licence and the reasons leading to this decision,
- any remedial action required by the applicant to obtain a Licence,
- the revocation of a Licence and the grounds for that revocation,
- the effective date of any of these notifications.

NB: A Licence Holder has the right to appeal any enforcement decision pursued by the Commission.

Surrender of Licence

If a licensee wishes to surrender their licence, they must notify the Commission in writing. The licensee must complete a Cessation of Business Plan, the format of which can be obtained from the Commission. The Commission will not revoke a licence until it is satisfied that the Cessation of Business Plan has been completed to its satisfaction.

The surrender of a licence does not relieve the former licensee of any penalties or other obligations due to the Commission.

Applying principles to functions

The regulator expects 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 in a transparent, accountable, proportionate, consistent and focused manner.

Regulating gambling in the public interest

The Commission will regulate in the public interest, having regard to, and in pursuit of, the guiding principles in the Law. In doing so the Commission will work with Operators, the Ancillary sector 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 sector 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 of the Gambling Commission (Jersey) Law 2010).

Consultation

The Commission will consult on changes to its regulatory approach where it is appropriate to do so.

Decision making processes

The Commission will ensure that 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 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).

The opportunity to make representations

The Commission will provide an opportunity for applicants to make 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 guiding principles. The Commission must take into account the regulatory impact on different types and sizes of applicant and Licence Holder and ensure, without compromising key principles, it does not unduly hinder the activity.

Provision of information

The Commission will endeavour to keep the sector 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 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 any risk assessment.

Gambling should be verifiably fair to consumers of those services.

The Commission will ensure that the Licence it issues, together with the conditions it imposes and the codes of practice it publishes, set appropriate standards of conduct for Licence Holders, in connection with any permitted 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 relevant gambling service should present gambling in such a way that access by children and young persons is generally prohibited.

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