



## **Policy Statement:**

# **The Conduct, Regulation and Licensing of Amusement with Prizes Operators**

**July 2013**

## **Introduction**

This document sets out the Commission's policy for the regulation under Licence of an Amusement with Prizes Operator, the relevant permissions, responsibilities and appropriate enforcement. It is published in accordance with Article 9 of the Gambling (Jersey) Law 2012 (the Law) and will come into force on 1<sup>st</sup> January 2013. In publishing this policy, the Commission sets out the circumstances 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 Amusement with Prizes Operator Licence 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**

### **What is an Amusement with Prizes Operator Licence?**

This Licence allows for the provision of low prize and low stake gambling machines at a prescribed event. The holder of a Licence may make these machines available for play by the public on the understanding that the event is not permanent and then only at that event. Moreover, the provision of these gambling machines must not be the main attraction of the event but form just a small part of a wider entertainment.

### **What are Low Payout Gambling Machines (LPGM)?**

A gambling machine for the purposes of this policy 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 superlative skill, chance or skill and chance combined. The Commission reserves the right to alter this definition.

The gambling machines covered by this policy and permitted to be made available under this Licence are generally known as:

- Low Payout Gambling Machines (prize up to £5)
- Pushers or Stackers (prize up to £5)
- Cranes and Shufflers (prize up to £5)

## **Policy**

In accordance with the Law, the Commission must publish a policy for those types of gambling requiring a licence to operate in or from within the Island. Therefore a licence is required for the following relevant service:

### **Amusement with Prizes Operator**

The purpose of this Licence is to allow operators to offer LPGM at Jersey organised events, such as the Battle of Flowers.

### **Validity of the Licence**

A Licence is valid per event and lasts only as long as the duration of an event.

### **Conditions applied to an Amusement with Prizes Operator Licence**

#### **Specific Conditions:**

It is a condition of every Licence that gambling must only be conducted at the event specified on the Licence and that this event is acceptable to the Commission.

[Art.16(1)]

A Licence must be prominently displayed by the licensee and in such a way and in such a place that the public have access to it.

A Licence will only be granted on receipt by the Commission of a formal arrangement between the *Jersey Event Organiser* and the *Amusement with Prizes Operator*.

A Licence does not permit the holder to transact any other business in Jersey other than offer LPGM at the event on the dates and times (operating times) at the event stated on the Licence.

A Licensee may only make available those LPGM stipulated on the Application Form and agreed by the Commission and that form a schedule to the Licence.

Alteration, proposed substitution or increase of LPGM must be made in writing and in advance of the commencement of the event to the Commission.

It is a condition of every Licence that gambling must not be advertised to or at children which for the purpose of this Licence means under 18 year olds.

[Art. 16(2)]

It is a condition and a point to prove that the applicant or Licensee requests and obtains approval from persons arranging and managing events prior to offering any gambling under Licence.

It is a condition of every Licence that gambling must comply with the Data Protection (Jersey) Law 2005 and anti-money laundering and counter terrorism legislation.

[Art. 16(3)]

It is a condition of the Licence that the Licensee keeps separate records per listed event. The Licensee, on request from the Commission, must send to the Commission an annual return detailing an account of those transactions made at the dedicated events held over the year. The Commission will accept a consolidated win and loss account per event.

The maximum number of machines allowed per licence shall be no more than 30 LPGM.

The Licensee must not offer LPGM to the public to play outside of the operating times prescribed on the licence.

LPGM must be switched off during any period outside of the operating times.

It is a condition of this Licence that LPGM should not be available to play by children, under 18s, unless if there is an adult supervising.

It is a condition of this Licence that the LPGM must be supervised by the licensee or by an authorised person of the licensee.

#### **Conditions: Staff/Promoters**

The Commission has the power to issue a direction under Article 35 (2)(c) Article 35(2)(c) requiring 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 or conduct of a Amusement with Prizes Operators licensee.

[Art.16(4)]

It therefore follows that it is a condition of every Licence that the Holder must not allow an individual to perform a function, engage in employment or hold a position, if the Holder knows or can reasonably be expected to know that such performance, engagement or holding is in contravention of such a direction. For example if the Commission considers certain employees or associates of the Licence Holder not fit and proper then they cannot be involved or employed in the conduct of the gambling.

#### **Mandatory Conditions – Right of Entry and Inspection**

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

[Art. 17(1)]

In connection with any routine examination, it is a condition that the 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 Holder in connection with or in preparation for the conduct of the gambling;
- 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.

[Art. 17 (2)]

### **Mandatory Conditions – Change of Control and Membership**

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 ownership and membership constituting the Holder and in a form published by the Commission.

[Art.17 (3)(a)&(b)]

It is a condition of the Licence that the Holder must inform the Commission of the incidence of material change to the structure of the business.

### **Mandatory Conditions – Duty to Provide information**

It is a Condition that the Licensee must inform the Commission of any adverse information in respect of the following incidents:

- If the 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 and that by withholding this information it is likely to result in the Commission being misled as to the Licensees activities.

[Art. 17 (4)(7)(8)(9)]

- Unless in cases where the information provided is found to be false [Art. 34], it should be noted that any Statement made by the Licensee under this condition may not be used by the prosecution in evidence against the Licensee 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  
[Art. 39].

### **Supplementary Conditions**

It is a condition that the Licensee provides and maintains a current address at which the Licensee 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.

[Art. 21 (g)]

### **General Condition**

It is a condition of all licences & permits 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.

The holder of an Amusement with Prizes Operators Licence should note that cheating is now a criminal offence and any incidence should be reported to the police.

### **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 [Art. 38 (3)(b)];
- the Licensee fails to pay fees [Art.38 (c)];
- the Licensee or applicant produced misleading and inaccurate information when applying for a Licence or subsequently under the reporting conditions applied to a Licensee [Art. 38 (3)(d)(ii)];
- the Licensee has breached such conditions of a licence without taking remedial action required and set out in notices from the Commission [Art. 38 (3)(a)];
- on application the person is found not to be bona fide or indeed would require another form of commercial gambling licence [Art. 38 (3)(e)];
- the Licensee holder requests it [Art. 38 (2)(a)];
- Jersey's reputation is imperilled [Art. 38 (3)(f)];
- supplying unfair gambling products,
- if the Commission has issued a direction under Art.16(4) to the Licensee (refer to Staff/Promoter heading).

The Commission must articulate reasons for refusing and revoking a Licence in line with Article 43 (notification of decisions) and the right of appeal must be applied under **Article 45**. [Reg. 4 (1)(j) & Art. 38]

## **Applications**

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 (Article 11)**

Applications must be made on forms provided by the Commission. These forms 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 staffing has changed or 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.

[Art. 11(5)]

It remains the right of the applicant to withdraw the application at any time before the Licence is granted or refused. The applicant must supply a written notice to the Commission stating the intention to withdraw the application. [11 (6)]

### **Grant of a Licence (Article 12)**

An applicant must provide the Commission with details of the structure of the operator, who is involved in managing activities, promotion and control of the gambling and all beneficiaries of the operation. The Commission accepts that most Amusement with Prizes Operators are likely to be sole traders.

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 of 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 Licence will not be harmful to the reputation and integrity of Jersey in gambling matters along with commercial and financial matters.

[Art. 12(1)(d)]

### **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.

[Art. 12(1)(g)]

### **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.

[Art. 12(3)]

### **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. a Amusement with Prizes Operators must be linked to a defined event.

[Art. 12(1)(e)]

In examining the application the Commission must consider whether the proposed gambling activities correspond to the applied for Licence and regulatory regime or would more properly require another type of approval. For the exclusion of doubt, an Amusement with Prizes Operators only applies to the operation of that particular form of gambling, there can be no commercial diversification without approval from the Commission.

[Art. 12 (1)(f)]

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.

[Art. 12 (3)(f)]

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;
- or 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.

[Art. 12 (g)] [

### **Convictions**

Remembering that one of the Commission's key licensing principles is to keep gambling crime free, this necessarily extends to all applicants for Licences. 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 this 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 2005, 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 offence, under the law of a country or territory outside Jersey.

[Art. 12(3)(h)]

### **Applying for a New Licence**

If an application is received for a Licence before the expiry of another Licence for the same activity from the same person or company, the Commission may not necessarily insist on repeating a full due diligence investigation if that applicant 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. [Art. 12(5)]

### **Article 43: Notification of decisions**

The Commission must notify the applicant or Licensee (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 Licensee has the right to appeal any enforcement decision pursued by 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 the 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 Licensees.

### **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.

**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.

**Gambling should be verifiably fair to consumers of those services.**

The Commission will ensure that the Licences it issues, together with the conditions it imposes and the codes of practice it publishes, set appropriate standards of conduct for Licensees, in connection with any permitted activity.

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

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

Where applicable to Licensee the relevant gambling service should not present gambling in such a way that access by children and young persons is generally promoted.