

## **JERSEY GAMBLING COMMISSION**

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# **Policy Statement for the Conduct, Regulation and Licensing of Personal Gambling Licences**

## **Introduction**

This document sets out the Commission's policy for the regulation of Personal Gambling Licences in Jersey, 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 in 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 (of any kind falling under Gambling (Ancillary Services and Miscellaneous Provisions) (Jersey) Regulations 2012) 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 Personal Gambling Licences 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

A personal gambling licence is awarded under Regulation 7(4) of the Gambling (Ancillary Services and Miscellaneous Provisions) (Jersey) Regulations 2012 and is only required in circumstances where an individual is also engaged by a firm which is:

An exempt finance business by virtue of Article 5(3)(c) of the Gambling (Jersey) Law 2012; **and** is a trust company business (TCB) within the meaning of the Financial Services (Jersey) Law 1998.

## Policy: Personal Licences

The purpose of this particular Licence is to allow those individuals employed by a TCB to undertake the role and responsibility of a director/principal (see limitations below) of a commercial gambling operator as a separate function to their role within an entity regulated by the Jersey Financial Service Commission (JFSC).

Regulation 7(4) of the Gambling (Ancillary Services and Miscellaneous Provisions) (Jersey) Regulations 2012, keeps the TCB itself exempt from Commission control (JFSC will continue to regulate it), but ensures that if the TCB service is to provide an individual as a director to a gambling Licence/Permit-holder body, then that individual will need a Commission Licence if he or she is involved in the provision of the gambling service by a commercial gambling licensee.

The requirement to hold a Personal Licence does not extend to all principals of a commercial gambling licensee. Regulation 7 also provides a general exemption for other directors and employees from holding an individual Licence as they are caught under the conditions of the main Commercial Gambling Licence.

## Defining a Personal Licence

The award of a Personal Licence should not be taken as a qualification that the holder is an expert in gambling or competent to run a gambling operation. A director or principal under this Licence relates to another specialist service. A holder of a Personal Gambling Licence may offer corporate services for gambling businesses and provide the following client services<sup>1</sup>:

- The formation and Incorporation of the company including:
  - trading licences,
  - e-gaming licences,
  - licence renewals,
  - due diligence,
  - data protection governance/compliance.
- The provision of Directors, Company Secretaries and the Registered Office.
- On-going Management and Administration of the business including:
  - reporting duties,
  - book-keeping,
  - accounting services.
- Establish Consultancy contracts and Service Level Agreements (SLA's) with key third party providers where required (e.g. domain name registration)
- Establish, administer and control of bank accounts and Merchant Services for the Commercial Gambling Company.

## Applications: Personal Gambling Licence

Certain conditions apply to the grant of a Personal Gambling Licence and remain conditions after it has been granted. In considering the application for any Personal Gambling Licence

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<sup>1</sup> This is not an exhaustive list; the applicant for a Licence must provide the Commission with a comprehensive description of the duties they mean to perform or offer.

the Commission must ensure that in granting it there is no contravention of the Guiding Principles (as outlined above) and that the application and award conforms to the Regulations setting out the appropriateness of the applicant.

However, the onus is placed on the applicant to satisfy the Commission that they are fit and proper persons to hold this Licence and that the gambling business they seek to be a principal of conducts itself in such a manner that 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 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.

### **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 applicant 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 he or she 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 it 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)**

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 applicants:

- integrity,
- competence,
- financial standing,

The applicant may then be considered a fit and proper person to hold a Personal 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)]

### **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 (with reference to those pertinent sections of the Personal Declaration Form);
- whether the applicant has at any time been subject to adverse findings, in either the provision of any professional service or gambling related services by a regulatory / 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 towards the conclusion of the 5-year life cycle. 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 has sufficient connection with Jersey to enable it to take effective enforcement action against the applicant if so required.

[Art. 12(1)(e)]

In examining the application the Commission must consider whether the licence applied for is the correct form of approval required or whether regulatory the applicant would require another type of approval.

[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 or any gambling company the applicant/licensee has managed;
- an injunction has been issued under Article 36(2) to the applicant or any gambling company the applicant/licensee has managed;
- or an order has been made under Article 36(4) on the basis of any contravention by the applicant or any gambling company the applicant/licensee has managed,
- the applicant or any gambling company the applicant/licensee has managed has been the subject of an order for intervention under Article 37,
- a Licence held by the applicant or any gambling company the applicant/licensee has managed has been revoked under Article 38, or
- the applicant or any gambling company the applicant/licensee has managed 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 applicant or any gambling company the applicant/licensee has, does or intends to manage. 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 Personal Gambling Licence before the expiry of a current Licence for the same activity, the Commission may not necessarily insist on repeating a full due diligence investigation if the applicant has a good compliance record. In considering the application for a new Personal Gambling 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)]

It should be noted that a Personal Gambling Licence lasts for 5 years and is subject to the annual fee documented in the relevant fee statement. If on application for a new Licence there has been no material change of the kind mentioned in the preceding paragraph, the applicant should send with the application form a statement to this effect. Provision of this statement may mitigate the need for a new application fee. [JGC guidance]

### **Conditions applied to a Personal Gambling Licence**

The Gambling (Jersey) Law 2012 contains a set of mandatory licence conditions, which must be applied to all licences. While the Commission has some discretion in relation to other conditions contained under subsequent articles, the matters set out under Article 15 compel the application of Article 16 and 17 conditions and at least one supplementary condition (Article 18). The Commission understands that Personal Gambling Licences already contain certain limitations because of the TCB element which creates this particular permission and therefore has adapted as far as is practical those duties ostensibly designed for the regulation of Commercial Gambling Licences. To this end, some conditions apply as a compliance function; the corporate director for instance should be satisfied that the commercial gambling company it administers complies with the conditions placed on its licence by the Commission. A Personal Gambling Licence is not designed to create unnecessary repetition in relation to the good governance of a Commercial Gambling Licence and any prescribed reportable events. However, the fact remains that a personal gambling licence is designed to permit certain individuals to undertake principal functions for a commercial gambling entity, which does extend to compliance checks with those core mandatory conditions. The holders of a Personal Gambling Licence must therefore satisfy themselves that necessary systems are in place and that they can confirm the applicable licence conditions are met.

### **Mandatory Conditions**

It is a condition of every Personal Licence that the gambling operator for which they act must only conduct operations from the premises specified on the Commercial Gambling Licence and that these premises are acceptable to the Commission. Naturally, this only applies to the extent that gambling is conducted under a licence from any premises in Jersey.

[Art.16(1)]

It is a condition the holder of a Personal Gambling Licence ensures that the operator for whom they act does not advertise gambling to or at children which for the purpose of this Licence means under 18 year olds.

[Art. 16(2)]

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)]

### **Specialist Roles**

It is a condition of every Personal Licence that the gambling operator for which they act, must not allow an individual to perform a function, engage in employment or hold a position, if the commercial licensee knows or can reasonably be expected to know that such

performance, engagement or holding is in contravention of a direction referenced under 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.

As mentioned previously, a Personal Gambling Licence is issued to reflect those activities undertaken by a TCB employee, which meet the definition of corporate management services to a commercial gambling operator. These activities could not reasonably be described as including specialist gambling services such as devising gambling games, monitoring the gambling in accordance with published codes, compliance with gambling specific conditions or indeed contracting bets or wagers with the public.

[16 (4)]

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

It is a condition of every Personal Licence that the gambling operator for which they act must co-operate with the Commission to enable it to carry out reasonable routine examinations, including occasional examinations of the Commercial Licence Holder without advance notice. [Art. 17(1)]

### **Restrictions: Right of Entry & Examination**

As the holder of a Personal Gambling Licence is also an employee of a TCB, the right of entry and inspection is limited to the gambling business they administer and all related documentation held in any format, but solely related to the administration of this commercial gambling business. [JGC Guidance]

### **Routine Examination**

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 Commercial Gambling Licence Holder for the conduct of the gambling [restrictions set out above];
- allow officers or agents of the Commission, while on the premises [restrictions set out above]:
  - 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 Personal Gambling 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 it may reasonably require in relation to the structure, control and membership constituting the Commercial Licence Holder. Therefore, this is a condition of the Personal Gambling Licence to ensure there is a system in place to inform the Commission of any incidence of material change.

As far as is applicable in relation to the role and duties provided and undertaken by the provision of corporate management services under this Licence to a Commercial Gambling Operator, the holder must ensure that the Commission is provided with the information it may reasonably require in relation to:

- the conduct of gambling, from Jersey or from any other country or territory, by the commercial licensee or by any holding body or subsidiary of the commercial licensee;
- the control, by its owners, executive officers and directors, of any body corporate constituting the commercial licensee, or of any holding body or subsidiary of the licensee;
- the regulation, by any body exercising in any country or territory other than Jersey similar functions to those of the Commission, of gambling conducted from such a country or territory by the licensee or by any holding body or subsidiary of the licensee.

[Art.17 (3)]

### **Reporting Relevant Information to the Commission**

The holder of a Personal Gambling Licence must provide the Commission with any information in his or her possession if they know or have reasonable cause to believe that the information is relevant to the exercise of the Commission's functions under the Law in relation to the commercial licensee.

The Holder of the Personal Licence should apply an objective test to information of material significance and consider whether a failure to disclose this information would likely result in the Commission being misled on any matter in relation to the exercise of its regulatory functions in relation to the commercial licensee.

It is a condition of a Personal Gambling Licence that the holder ensures the commercial licensee notify the Commission (in relation to that company granted a commercial licence or to any holding body or subsidiary of that company) of:

- any change to the structure of such a company;
- any significant changes to the class of the shares in such a company or the rights that attach to them;
- the identity of each shareholder in such a company who holds 10% or more of the shares in that company;
- any change to the shareholdings in such a company, being changes relating to 10% or more of the issued share capital of that company; and
- any appointments, dismissals, resignations or deaths of directors of such a company.

It is a condition of the Personal Gambling Licence holder to ensure that information is supplied to the Commission on request and in relation to the conduct of overseas gambling by the commercial licensee or by a particular holding body or subsidiary of the licensee in relation to:

- any investigation into such conduct, being an investigation carried on outside Jersey by a law enforcement agency other than the Jersey Commission;
- any changes to the laws of the country or territory in which the gambling is conducted, being laws that relate to that conduct.

[Art.17 (4)(5)(6)(7)(8) & (9)]

### **Limitation on the use of information**

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 and 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.

### **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)];
- if the Commission has issued a direction under Art.16(4) to the Commercial Gambling 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]

### **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,
- 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;
- the 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 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.