

JERSEY GAMBLING COMMISSION

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Policy Statement for the Conduct, Regulation and Licensing of Thrift Club Gambling in Jersey

Introduction

This document sets out the Commission's policy for the regulation under licence of Thrift Club Gambling 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) and will come into force on 1st 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 (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 Thrift Club Gambling 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 is defined in the Gambling Law as a business which contracts directly with a customer and for profit. Thrift Clubs directly offer gambling services *to* or contract *with* the public in the form of a customer/punter relationship and is therefore commercial gambling.

Policy: Thrift Clubs

Thrift Clubs are a common arrangement in Jersey public houses; the club is established by 'regulars' and raises money in various ways to benefit a defined membership. Members of the public (who are not members of the Club) participate in fund raising events conducted by the Club Membership, to win some reward.

It is now a requirement for all Thrift Clubs using gambling activities offered to the public to apply to the Commission for a Thrift Club Licence.

What do we mean by gambling?

The most popular method of fund raising used by a Thrift Club is a weekly draw or lottery. The most common form is Open the Box, where a member of the public, present on liquor licenced premises, purchases a cloak room ticket for £1 which is entered into a draw. There is only one draw per night. The time of the draw is announced and the winning ticket allows the winner to select one key from a bunch of keys and attempt to open the lock of a box. If the key opens the box the person wins the advertised jackpot.

This is a weekly event, usually falling on a Friday evening to maximise the end of the working week drink. The prize accrues until it is won and can amount to thousands of pounds. The initial prize e.g. £50 is sponsored by the Thrift Club membership and the prize increases weekly topped up by a portion of ticket sales, the remainder of monies raised credited to the Thrift Club account.

The other form is the Friday or Sunday night meat raffle, here members of the Thrift Club supply items as prizes and the public buys chances in the draw. The first name out of the drum or hat has first choice of a range of prizes and so on until the last prize is drawn.

There may be other variants on gambling based fund raising, but lottery formats appear to be the most popular and successful.

A lottery is gambling if it contains the following 3 elements:

- A charge in money or monies worth to enter
- A draw to decided the winner
- A prize in money or monies worth

Exemption

If a Thrift Club does use gambling to raise funds to benefit a charity or good cause (e.g. not personal or membership gain) it may require registration or possibly a Permit from the Commission issued under the Charitable and Membership Gambling Regulations.

A Thrift Club that uses gambling to raise funds for the club or club membership but does not offer participation to the public (e.g. strictly limited to membership participation) would not require a licence if the activities are considered private gambling. To qualify for private gambling in this sense, the Club must not conduct gambling in a public place or advertise the fact of this gambling to anyone other than members.

To clarify: private gambling cannot happen in a place such as public house if the general public have equal access to the same facilities at the same time as the Thrift Club meets to gamble. [Art 28(2)]

Temporary Membership not accepted

The Commission does not accept variable or temporary membership schemes; they are considered evasive attempts to distort the understanding of private gambling. For example *one night membership only to participate in a draw/raffle* does not exempt a Thrift Club from the duty of obtaining a gambling licence from the Commission.

Defining Thrift Club Gambling

The Commission requires Thrift Clubs to obtain a licence if they wish to conduct gambling with members of the public.

Thrift Club Gambling is generally distinguished by the following aspects:

- The method of gambling is the promotion of gaming and lotteries, combinations and subdivisions of those (or of other forms), such as, games of mixed chance and skill.
- The payment for entering the gambling is low value cash.
- The premises or locations in which gambling is conducted are public houses or other public places such as hotels.
- A licence is awarded per establishment e.g. the Thrift Club cannot hold multiple gambling activities in more than one public house. There can be no linked premises fund raising e.g. an accumulated pot generated by 3 public houses. If a Thrift Club operates from more than one premises then separate licences will be required.
- The persons conducting the gambling are a Thrift Club or other forms of similar body established to save monies to benefit a select membership.
- The Thrift Club raises these monies through conducting gambling with persons present in public houses who are not ordinarily a member of the Thrift Club and who benefit from the chance to win the prizes on offer by means of the gambling.
- The purposes for which gambling is conducted is to raise money for the specified purpose of financially benefiting Thrift Club Members. Thrift Club Gambling may also have the joint purpose of acting as an inducement for persons to attend the Public House at which the event is held.
- Thrift Club Gambling is distinguished by the cost per chance being no greater than £10 and the amount that may be won in any one event does not exceed £5000. The purchase of a chance must be in the form of cash or cheque and not by debit or credit card. The prize may accumulate. There may not necessarily be a winner of a prize at every draw, but under this licence the prize is a palpable further chance to win the offered jackpot.
- Thrift Club Gambling may be advertised, but any advertisement must comply with published guidelines, namely any advertisement must not be misleading or directed at children.

[Art.3]

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.

Duration of the Licence

A Licence is valid for one year, meaning a calendar year. Every Thrift Club Licence expires, irrespective of when in the year it was granted and without exception, on 31st December.

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 structure of the Club has changed or a treasurer or chairman 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 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)

An applicant must provide the Commission with details of the structure of the club, who is involved in managing activities, promotion and control of the gambling and all beneficiaries/members of the Club.

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,
- 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 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 prizes;
- 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 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 business has sufficient connection with Jersey to enable it to take effective enforcement action against the business if so required e.g. the Thrift Club Gambling Licence must be linked to a premises.

[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.

[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 a current Thrift Club Licence, 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)]

Conditions applied to a Thrift Club Gambling Licence

It is a condition of every Licence that gambling must only be conducted from the premises specified on the Licence and that these premises are acceptable to the Commission.

[Art.16(1)]

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 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)]

Regulatory Return

Licensees must furnish the Commission with a regulatory return on such a form as provided by the Commission. The Regulatory Return will be submitted annually and within 30 days after the expiry date of the Licence.

If a licensee misrepresents or fails to reveal information they are asked to provide, without reasonable excuse, an offence will have been committed under Article 34 of the Law.

Anyone providing information of a false or misleading nature risks prosecution.

Please note that, after receipt of a completed Regulatory Return, the Commission may still need to contact you for any further information we consider necessary in order to process your Regulatory Return.

All information provided to the Commission will be processed in accordance with the Data Protection Law and treated as commercially sensitive.

Staff/Promoters

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 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 Thrift Club Licence or any Licence Holder.

[Art.16(4)]

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 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 control 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.

It is a condition of the Licence that the Holder informs the Commission of any change in respect of the membership including removal and addition of members.

[Art. 17(4) & (5) in relation to Art. 12 (5)]

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.

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]**

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 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.