JERSEY GAMBLING COMMISSION

Policy Statement for the Conduct, Regulation and Licensing of Promotional Lotteries

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Introduction

This document sets out the Jersey Gambling Commission's policy for the regulation of Promotional Lotteries 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 if it considers it reasonably consistent with the 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 Promotional Lottery 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 renewa~~l;
- 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: Promotional Lotteries

Defining a Promotional Lottery

A promotional lottery is a lottery offered to the public as a sales incentive by a retailer or other business. A promotional lottery may not be a separate product, it is wholly an advertising vehicle to incentivise the public to shop and purchase certain promoted goods during, for example, seasonal sales.

The Law allows purchase-dependent competitions (generally lotteries) as a means of advertising and promotion to take place, but makes them subject to regulation.

A promotional lottery allows 'purchase necessary' to be used as a sales tactic to qualify for entry to a draw. This policy in no way prohibits or limits the use of free entry draws.

Please Note: Lotteries are one of the mainstays of charitable fundraising and the Commission does not propose to allow retailers to directly sell chances/tickets for any large-scale, large prize lotteries. The purpose of allowing and regulating promotional lotteries is to provide a legal pathway for offering short-duration prize draws by Jersey-based businesses.

To reiterate: a promotional lottery is designed as an added attraction and advertising feature for a business, but not as a commercial gambling vehicle.

Skill or Chance?
Unlike other jurisdictions, Jersey does not make a distinction between a lottery and a prize competition and always applies the principle that *any* element of chance outweighs skill. Similarly, any declaration of a 'free draw' must be genuinely and demonstrably separated from any purchase and made available without any cost to the player.

Regulation
Regardless of the scale or nature of the prize offered, the Law is clear that any gambling activity undertaken by way of business and with a customer requires a licence. Any Jersey business wishing to offer a commercially linked promotion involving a consideration (purchase) and some element of chance determining the prize, will require a licence and be subject to the licensing requirements of the Gambling (Jersey) Law 2012. This may be perceived as being quite onerous given the nature of the activity and there is a degree of bureaucracy that has to be undertaken, but the Commission intends to be flexible and will apply a light-touch as appropriate.

Policy: General Requirements

Licences: Applications and Duration

All promotional lotteries are subject to an application process. Application forms can be found on the Commission's website: www.jgc.je. The application is for a licence known as a **Promotional Lottery Licence**.

The award of a Promotional Lottery Licence should not be taken as a qualification that the holder is an expert in gambling or competent to run a gambling operation. The Licence will allow the offering of purchase-dependent entry into a draw or lottery and the licensee will be personally or corporately responsible for adhering to the conditions of the Licence.

A Promotional Lottery Licence is awarded per event and is valid from the date it is granted and until the conclusion of the promotion. **PLEASE NOTE:** a promotion, prior to public release, must be notified to and approved by the Commission and offered strictly in accordance with Licence conditions.

An applicant/licensee must describe a promotion or proposed promotion in detail, articulating the following:

- the sales period over which tickets will be issued,
- the product, products or spend threshold qualifying entry to the draw,
- the prize and how a winner will be determined (manner of the draw),
- whether the promotion is linked to purchase or not,
- the recording of entrants and how any provided data is stored in compliance with Data Protection legislation.

The Commission may at its own discretion request further information or documentation from the applicant/licensee in determining whether to grant a Licence or allow a promotion. Please refer to the application form for further details.

Certain conditions apply to the grant of a Promotional Lottery Licence and remain conditions after it has been granted. For example, once a Licence expires any unfulfilled duties in respect of a promotion still apply. In considering an application for any Licence 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 of a Licence conforms to the requirements set out in this policy.

The onus is always placed on the applicant to satisfy the Commission that they are fit and proper persons to hold a Promotional Lottery Licence and that the gambling activity they seek to conduct would not bring the Island into disrepute.

Change of Circumstances During the Application Process
A duty is placed on the applicant to inform the Commission in writing of any change of circumstances 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~~within five working days and before the Licence is issued; failure to do so may result in the ~~revocation~~ refusal to grant~~of~~ that Licence on the grounds of providing false or misleading information.

Withdrawing an Application
It remains the right of the applicant to withdraw an 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.

Applying for the Right Licence?
In examining the application the Commission must consider whether the Licence applied for is the correct form of approval required or whether the applicant would require another type of approval.

Grant of a Licence
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, inter alia, the applicant's:

- **integrity** – e.g. the applicant is an established business, the rules for entry are clear, fair and proportionate.
- **competence** – e.g. the draw will be conducted in a fair and open way, any advertising is undertaken in compliance with the Advertising Code of Practice.
- **financial standing** – e.g. proof that any prize offered can be honoured.

All points satisfied, the applicant may then be considered a fit and proper person to hold a Promotional Lottery 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.

***Sufficient* Connection Test**
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. **PLEASE NOTE:** For an applicant to be granted a Promotional Lottery Licence, a business must be physically located in Jersey and selling physical goods or offering local services to Jersey residents or visitors.

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 (can the applicant honour all stated prizes);
- 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 (e.g. has the applicant as an individual or the company as part of a retail chain been subject to any investigation in relation to gambling promotions or any other matter);
- 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.

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 convictions outside of Jersey the applicant or applicant company has. 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 offence, under the law of a country or territory outside Jersey.

Applying for a New Licence

If an application is received for a Promotional Lottery Licence before the expiry of a current Licence for a similar activity, the Commission may not necessarily need to require the same degree of information accompanying the application form if the applicant has a good compliance record. In considering the application for a new Promotional Lottery 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.

It should be noted that a Promotional Lottery Licence is awarded per promotion and is subject to fees documented in the relevant fees 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.

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

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) on 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 or any gambling promotion has managed has been revoked under Article 38, or
- the applicant has been served with a final notice of a civil financial penalty under Article 39.

Grounds for refusal or revocation of a Licence

In accordance 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 Licensee or applicant fails to pay fees;
- the Licensee or applicant produced misleading and inaccurate information when applying for a Licence or subsequently under the reporting conditions applied to a Licensee;
- the Licensee 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 or indeed would require another form of commercial gambling licence;
- the License holder requests it;
- Jersey's reputation is imperilled;
- if the Commission has issued a direction under Art.35.

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.

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.

Licence Conditions

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).

A Promotional Lottery Licence is designed to permit Jersey-based businesses that are not professional gambling businesses, to offer a limited gambling function. However, holders of a Promotional Lottery Licence must satisfy themselves that they have the necessary systems in place to comply with applicable licence conditions.

Promotional Lottery Licence: Specific Conditions

Once a draw is promoted and people begin to participate, a draw must then happen. If, for any reason, the promoter wishes to cancel or postpone the promotion, approval from the Commission must be sought.

The date of the draw must be published and made obvious to any participant. The winner or winners must be contacted as soon as is reasonably possible after draw has taken place.

The rules for entry to the draw must be readily available and set out in a clear and unambiguous way.

A record must be maintained detailing how many people elected to enter the draw (e.g. tickets issued) along with confirmation that the winners received their winnings.

All tickets issued must enter the draw. If for some reason any ticket is overlooked and not placed in the draw, the promoter should inform the Commission as soon as is reasonably practical.

The manner of the draw – how the winner was decided – must be agreed with the Commission. A draw requires randomness, which means the winner is decided by chance and not deliberate choice.

The prize offered by a promotional lottery should not be disproportionate to the average cost of goods offered by the business and may be subject to a scale and cap.

The chance to enter a promotional lottery shall be through the purchase of a particular type of product or after a specified level of spend on goods within the commercial premises (or area of distribution).

The sale of tickets to enter a promotional lottery is prohibited.

No further fee, purchase or payment is required to claim or receive a prize.

No person under the age of 18 will be allowed to take part in any promotional lottery.

The purpose of this particular Licence is to allow Jersey-based businesses to offer promotional lotteries to customers visiting their premises and purchasing goods, and via online means such as a business's website. The use of premium telephone numbers is not permitted.

Recommendation

It is recommended that staff members should not be permitted to participate in any public promotional lotteries.

Mandatory Conditions

It is a condition of every Promotional Lottery Licence that services offered to the public only take place from the premises specified on the Licence and that these premises are acceptable to the Commission.

Advertising

It is a condition the holder of a Promotional Lottery Licence ensures that they do not advertise gambling to or at children which for the purpose of this Licence means under 18 year olds. A promoter may advertise a promotional lottery, however an advertisement must comply with the Commission's Advertising Policy. **NB: Advertising must not be directed at children or young people.** (See: http://www.jgc.je/policies/policies/policy-advertising/)

Compliance with Other Legislation

It is a condition of every Licence that the gambling promotion must comply with the Data Protection (Jersey) Law 2018 and anti-money laundering and counter terrorism legislation.

Supervisory & Enforcement Conditions

Specialist Roles

It is a condition of every Promotional Lottery Licence that the promoter must not allow an individual to perform a function, engage in employment or hold a position, if the 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.

Right of Entry and Inspection

It is a condition of every Promotional Lottery Licence that the promoter for which they act must co-operate with the Commission to enable it to carry out reasonable routine examinations, including occasional examinations of the Promotional Licence Holder without advance notice.

Restrictions: Right of Entry & Examination

It is a condition of every Promotional Lottery Licence that the operator must allow the right of entry and the examination of relevant records by Commission personnel, noting that such examination is strictly limited to records pertaining to the lottery and not records relating to the primary business activity.

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 Promotional Lottery 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.

Reporting Conditions

Mandatory Conditions – Change of Control and Membership

It is a condition of the Promotional Lottery Licence that the Holder must, on request, provide the Commission with information in relation to the structure, control and membership constituting the Promotional Licence Holder.

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

Reporting Relevant Information to the Commission

The holder of a Promotional Lottery Licence must provide the Commission, within five working days of becoming aware, with any information in their 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 licensee.

The Holder of the Promotional Lottery 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.

Limitation on the use of information

Unless in cases where the information provided is found to be false, 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

General Reporting Condition

It is a condition of all Licences and Permits that the holder should inform the Commission, within five working days of becoming aware, 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.

Supplementary Condition:

Current Address

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. A change of address must be notified to the Commission within five working days.

Also refer to section headed: **Promotional Lottery Licence: Specific Conditions.**

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.

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

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