Principles for determining financial penalties

Criteria for the imposition of a financial penalty

2.5 A financial penalty will not normally be used in the following circumstances (the list is not exhaustive):

- if the breach of a Licence condition was minor in nature
- if the breach, or possibility of a breach of a Licence condition, would not have been likely to be apparent to a diligent Licensee
- if the Commission considers that other regulatory action is more appropriate.

Q20: To what extent do you agree with the proposed circumstances in which a financial penalty would not normally be imposed, as set out in paragraph 2.5? Disagree

The Council suggests the Commission include the following additional circumstances within paragraph 2.5:

- if the licensee is a registered charity
- if the breach did not result in a financial benefit to the licensee or financial detriment to consumers.

In the above two circumstances, the Council suggests it would not ordinarily be appropriate for a financial penalty to be levied. It considers it would be appropriate to reflect this in paragraph 2.5, especially as flexibility already exists within that paragraph for the Commission to still impose a financial penalty if it felt the particular circumstances of the case merited it.

Criteria for determining the quantum of a financial penalty

2.7 The total amount payable by a Licensee will normally be made up of two elements:

i. The Disgorgement element: an amount to reflect any financial detriment suffered by consumers and/or remove any financial gain made by the Licensee as a result of the contravention or failure (where these can be calculated) Step 1 below and

ii. The Penal element: an amount that reflects the seriousness of the contravention or failure, the impact on the licensing objectives and the need for deterrence Steps 2 – 6 below.

2.8 The Commission will ordinarily approach the quantum of a financial penalty in the following way:

i. Step 1: Calculate the Disgorgement element to reflect any financial detriment suffered by consumers and/or remove the financial gain to the Licensee, if possible (see paragraphs 2.9 – 2.10).

ii. Step 2: Consider the seriousness of the breach to determine the appropriate starting point for the penal element of the fine (see paragraphs 2.11 – 2.20).

iii. Step 3: Consider any aggravating and mitigating factors that may increase or decrease the penal element (see paragraphs 2.21 – 2.24).

iv. Step 4: Consider the need for a deterrence uplift to the penal element, having regard to the principle that non-compliance should be more costly than compliance and that enforcement should deliver strong deterrence against future non-compliance (see paragraph 2.25).

v. Step 5: Consider a discount to the penal element where early resolution has been reached (see paragraphs 2.26 – 2.28).

vi. Step 6: Consider whether an adjustment should be made to ensure the sum of the figures at steps 1 (if calculated) and step 5 are reasonable and proportionate in respect of affordability (see paragraphs 2.29 – 2.32).

Q22: To what extent do you agree with the proposal set out in paragraph 2.7, to separate the calculation of the disgorgement element of the fine from the calculation of the penal element, with these added together at Step 6? Disagree

The Council understands the rationale for "disgorgement", in the sense of removing the financial benefit obtained by a licensee through non-compliance. It seems odd, however, to then suggest "Firstly, in circumstances where an accurate divestment amount cannot be calculated from information provided by the licensee, we propose that no sum will be calculated under Step 1. Instead, the detriment to consumers and/or gain to the licensee will be factored into the penal element of the penalty under Step 2 – considering the seriousness of the breach." If there is difficulty calculating the benefit to the licensee/detriment to consumers under step 2, why will it then be any easier to attempt that in considering seriousness at step 2? It seems to the Council more appropriate for the Commission to attempt to calculate the disgorgement figure in Step 1 on the basis of the information available to them.

In circumstances where the benefit to the licensee is capable of being estimated in step 1, given that the penal element of step 2 also considers GGY over the period of the breach, this also seems like double-counting to the extent that GGY has been increased as a result of the benefit to the licensee. As noted later, in respect of the lotteries sector in particular, GGY does not seem an appropriate basis on which to start determining the penal element of a fine.

Q23: To what extent do you agree with the steps proposed and the sequencing of these steps as set out in paragraph 2.8? Disagree

At present, Step 6 says "Consider whether an adjustment should be made to ensure the sum of the figures at steps 1 (if calculated) and step 5 are reasonable and proportionate in respect of affordability".

Given that the calculation of fines is not an exact science, and the potential for steps 1-5 to produce a figure which is disproportionate to the breach based on matters other than affordability, the Council suggests consideration be given to amending this to something like "Consider whether an adjustment should be made to ensure the sum of the figures at steps 1 (if calculated) and step 5 are reasonable and proportionate, and that the sum of the figures appears affordable for the licensee."

Step 1: Detriment to consumers and/or financial gain to the Licensee

2.9 Where the Commission can accurately identify (based on information provided by the Licensee) the financial detriment suffered by consumers and/or the financial gain to the Licensee derived directly from the breach, this sum will constitute the disgorgement element. At Step 6, the disgorgement element will be added to the penal element of the financial penalty calculated at Steps 2-5. 2.10 Where the disgorgement cannot be accurately calculated, detriment to consumers/ financial gain to the Licensee will not result in a disgorgement element under Step 1 although these factors may be relevant in assessing seriousness under Step 2.

Q25: To what extent do you agree with the proposal for the Commission to attempt to identify the amount of detriment to consumers and/or financial gain to the Licensee as a direct result of the breach as the first distinct step in the process? Disagree

The Council understands the rationale that offenders should not benefit financially from their offence, such that the financial benefit they made from the offence should be removed. This appears to reflect a “disgorgement” principle.

In circumstances where the offender has not benefitted from the offence, but consumers have in fact suffered a financial detriment, this would not seem to be a situation where "disgorgement" is required. In the Council’s view, "disgorgement" is appropriate to remove from the offender the benefit gained through the non-compliance. If the offender has not obtained such a benefit, but consumers have nevertheless suffered detriment, the Council suggests it would be more appropriate for the detriment to the consumer to be considered under the other steps relating to the seriousness of the offence, rather than the disgorgement step.

Q26: To what extent do you agree with the proposal that the amount of detriment to consumers and/or financial gain to the Licensee as a direct result of the breach should constitute the “disgorgement” sum added to the penal element of the fine? Disagree

See response to Q25 above.

Q27: To what extent do you agree with the proposal that if the level of detriment to consumers and/or financial gain to the Licensee cannot be calculated at Step 1, this should be considered as a relevant factor in assessing seriousness under Step 2? Disagree

The Council understands the rationale for "disgorgement", in the sense of removing the financial benefit obtained by a licensee through non-compliance. It seems odd, however, to then suggest “Firstly, in circumstances where an accurate divestment amount cannot be calculated from information provided by the licensee, we propose that no sum will be calculated under Step 1. Instead, the detriment to consumers and/or gain to the licensee will be factored into the penal element of the penalty under Step 2 – considering the seriousness of the breach.” If there is difficulty calculating the benefit to the licensee/detriment to consumers under step 1, why will it then be any easier to attempt that in considering seriousness at step 2? It would seem more appropriate for the Commission to attempt to calculate the disgorgement figure in Step 1 on the basis of the information available to them about the benefit gained by the operator from the breach.

In circumstances where the benefit to the licensee is capable of being estimated in step 1, given that the penal element of step 2 also considers GGY over the period of the breach, this would also seem like double-counting, to the extent such GGY has been increased as a result of the benefit to the licensee. As noted later, in respect of the lotteries sector in particular, GGY does not seem an appropriate basis on which to start determining the penal element of a fine.

Step 2(b) Determining the starting point of the penal element of the fine

Q33: To what extent do you agree with the proposal to use GGY generated during the period of the breach (rounded to the nearest month) as the starting point for determining the level of the financial penalty? Strongly disagree

GGY generated during the period of breach (rounded to the nearest month, to what seems a minimum 3-month period) is not an appropriate starting point for determining the level of the financial penalty in respect of the lotteries sector. At paragraph 2.20 of the consultation, the Commission recognises that in some circumstances it will not be appropriate for the starting point to be based on a percentage of GGY, and gives some examples of this. The Council strongly suggests that breaches in respect of lotteries be added to the Commission's list of

examples where it would not be appropriate to use GGY as a starting point, for the various reasons outlined further below. This is not to say fines could never be levied in respect of that sector, but, as the Commission sets out in paragraph 2.21, rather than using a percentage of GGY as a starting point, the starting point would be assessed based on the Commission's experience, knowledge and judgement of previous cases.

At a general level, the lotteries sector differs from the rest of the gambling sector in having a statutory requirement to return at least 20% of ticket prices to the good cause benefitting from the lottery. The vast majority of lottery operators in fact return a far higher percentage to good causes than the statutory minimum required. The lotteries sector therefore exists to raise funds for good causes, and many lottery operators are themselves registered charities.

Using GGY as a starting point for determining the level of financial penalty is inappropriate for the lotteries sector for the following reasons:-

(1) The Consultation refers to GGY as stakes minus prizes/winnings. In the lotteries sector, at least 20% of the ticket price must go back to the good cause. GGY for the lotteries sector should not include the sums which go to the good cause, as DCMS has acknowledged in its recent consultation on the statutory levy. Even if the sums to good causes were removed from the GGY calculation, this would still not be an appropriate starting point for considering fines in the lotteries sector as anything remaining, after deducting from the ticket sales the prizes costs and amount to good causes, must constitute the reasonable expenses of running the lottery. This includes matters such as the administrative expenses of running the lottery including the marketing of it to try and raise as much as possible for the good cause behind it. This adjusted GGY is unlikely to bear any relation to the ability of the financial operator to pay any such penalty, and does not seem a fair or reasonable basis against which to peg the penal element of a fine in respect of the lotteries sector.

(2) Due to way GGY is calculated, using it as basis for calculating the penalty element of a fine would have the effect of penalising the lottery sector because its model has a lower RTP than other sectors in the gambling industry. This is partly because the lotteries sector is less founded on generating funds through high volume frequent play, and partly because, unlike the rest of the gambling sector, at least 20% of the stake must be returned to the good cause promoting the lottery. While online casinos could have over 95% RTP and generate funds through the volume of frequent play, the RTP for lotteries will be far lower. In practical terms, because of the way GGY is calculated by removing the amount spent on prizes, this has the effect that, for every pound spent, the GGY for a lottery would be far higher than the GGY for other gambling sectors such as online casinos. Calculating the penal element of a fine based on GGY would as a result be unfair for the lotteries sector.

(3) The cumulative effect of the above is that, in respect of the lotteries sector, the starting point for even what is assessed as a lowest level breach (level 1) of even just 1% could still be a very large and disproportionate fine, simply because the GGY in that sector per pound spent gambling is much higher. This is compounded by the Commission's proposal that, if the breach period lasted less than 3 months, the GGY derived by the licensee in the 3 months preceding the end of the breach would be used. The result of this would be that a lottery having a minor breach lasting 1 day, would be fined up to 1% of GGY over the 3-month period prior to the breach – which for the reasons detailed above could result in a very large figure. Given that many operators in the lotteries sector are themselves charities, the practical effects of this could be particularly damaging.

In addition to all the reasons outlined above, the following are more general comments regarding the proposed use of GGY which may apply across the industry more generally.

The Council can't see a principled reason for the penal element of Step 2 to be determined on GGY, insofar as that GGY is unrelated to the breach. For example, Company A and Company B commit exactly the same breach, with exactly the same impact on consumers. Why should the fine for Company A be far higher than company B, just because company A has greater GGY than company B for reasons entirely unconnected to the breach? This situation is compounded by the fact that in some situations (particularly the lotteries sector) GGY bears little to no relationship with how profitable the operator is, or their ability to pay.

The Council also sees no principled reason why, if the period of breach has been less than 3 months, the figure will be calculated based on the GGY in in the 3 months prior to the breach, rather than on the period of the breach? The effect of this "minimum period" is to unfairly penalise operators having breaches over a shorter period.

Q34: In the case of one-off or events lasting short time periods, to what extent do you agree with the proposal that GGY derived during the quarter preceding the end of the breach should be considered the starting point for determining the level of the financial penalty? Strongly disagree

The Council sees no principled reason why, if the period of breach has been less than 3 months, the figure will be calculated based on the GGY in in the 3 months prior to the breach, rather than on the actual period of the breach? The effect of this "minimum period" is to unfairly penalise operators having breaches over a shorter period.

Q36: To what extent do you agree with the proposal that the starting point for the financial penalty will be calculated by adopting a percentage of GGY derived during the period of the breach, where this percentage is set by reference to the level of seriousness of the breach? Strongly disagree

See response to Q33 above.

Q37: To what extent do you agree with the percentage ranges proposed to inform the starting point of the penal element, associated with the level of seriousness of the breach? Strongly disagree

The Council strongly disagrees with the principle of using GGY as a basis for calculating a penalty in relation to the lotteries sector, for the reasons detailed above.

Beyond that, the GGY percentages ranging up to 15% seem very large especially, as stated above, as GGY can bear little relation to the profit made by the offender from the breach, or the profit made by the offender during the period of the breach. It seems a somewhat arbitrary measure against which to start assessing the level of fine to be issued.

Q39: Do you have any comments on the circumstances in which it would not be appropriate to use GGY as the starting point for this calculation? Please include here any other examples we should consider adding to paragraph 2.20.

See response to Q33 above

Step 6 Affordability

Q52: To what extent do you agree with the proposal that the final penalty amount will be the sum of the amount calculated at Step 1 (disgorgement, where it has been possible to identify) and that at the end of Step 5? Strongly disagree

To the extent that the Council has provided comments in response to previous questions raising concerns in relation to Step 1, and the way GGY is used within the steps to help calculate the Step 5 figure, it disagrees with using these as a basis to produce a final penalty amount, particularly in respect of the lotteries sector. The reasons for stating GGY is an inappropriate basis on which to calculate the starting point for fines in the lotteries sector has been detailed in the responses to previous questions.

Q53: To what extent do you agree with the proposal to take affordability into account, and to mitigate against financial hardship? Strongly agree

Q54: To what extent do you agree that when considering affordability, the Commission should take into account the financial resources of any parent or group or ultimate beneficial owner, in addition to the Licensee's own resources? Disagree

In the Consultation, the Commission mentions the affordability step is there "…to ensure the total sum is affordable, to safeguard against serious financial hardship on behalf of the licensee. It is not the intention of these proposals to impact on the solvency of the licensee or its ability to continue trading, and this final proposed step includes this consideration."

If the Commission considers the financial resources of a parent or group in addition to the licensee's own resources when considering affordability, this risks impacting on the solvency of the licensee if the Commission decides to impose a higher fine on the basis that, although the licensee might not be able to afford it, the group can. One of the main reasons for creating a group structure is to limit liability, such that other entities within a group remain can remain unaffected if one particular group company has financial difficulty. Assessing the ability to pay of a licensee based on the group position risks the group deciding not to bail out the licensee, with the licensee becoming insolvent as a result.

Amendments to the Indicative sanctions guidance

Proposed deletions are shown using strike-through and additions underlined.

Financial Penalties

2.18 Financial penalties can only be imposed when the Commission consider that a Licence condition has been breached. A financial penalty should aim to:

- change the behaviour of the Licensee
- eliminate any financial gain or benefit from non-compliance with Licence conditions
- ~~be proportionate to the nature of the breach of Licence condition and the harm caused~~
- deter future non-compliance by the relevant Licence holder and other Licence holders more generally.

<u>2.19 By virtue of section 121(7) of the Act, in considering the imposition of a penalty, the Commission must have regard to:</u>

- <u>the seriousness of the breach of condition in respect of which the penalty is proposed</u>
- <u>whether the Licensee knew or ought to have known of the breach</u>

- the nature of the Licensee (including, in particular, the Licensee's financial resources).

2.20 The Commission may also have regard to:

- whether the breach of a Licence condition is an example of repeat behaviour by the Licensee
- whether the breach of a Licence condition arose in circumstances that were similar to previous cases the Commission has dealt with which resulted in the publication of lessons to be learned for the wider industry
- the timeliness of any admissions made by the Licensee and actions taken to remediate the breach of a Licence condition
- where the breach of a Licence condition was committed intentionally or recklessly
- where the breach of a Licence condition could have been prevented by the Licensee
- a breach of a Licence condition arising from a systemic failure
- where the breach of a Licence condition gave rise to financial gain for the Licensee
- where the breach of a Licence condition had an impact on consumers
- where the breach of a Licence condition may have damaged confidence in the gambling industry
- where the Licensee was aware but did not report the breach of a Licence condition
- where there is a lack of timely and effective remedial action after the breach of a Licence condition or failure becomes apparent to the Licensee
- where a financial penalty is necessary to deter future contraventions or failures and to encourage compliance.

~~2.19 Imposing a financial penalty may be appropriate when some or all of the following factors are apparent:~~

- ~~the breach of a Licence condition was committed intentionally or recklessly~~
- ~~the breach could have been prevented by the Licensee~~
- ~~the Licensee was aware or should have been aware of the breach~~
- ~~there was a repeated breach of a Licence condition~~
- ~~there was a systematic failure to comply with a condition of the Licence~~
- ~~the breach gave rise to financial gain for the Licensee~~
- ~~the breach of a Licence condition had an impact on consumers~~
- ~~the breach of a Licence condition may have damaged confidence in the gambling industry~~
- ~~the Licensee did not report the breach of a Licence condition to the Commission~~
- ~~where there is a lack of effective remedial action after the breach or failure becomes apparent to the Licensee~~
- ~~where a financial penalty is necessary to deter future contraventions or failures an to encourage compliance, on the part of both the Licensee and other operators.~~

Q60: To what extent do you agree that the amendments proposed to the Indicative sanctions guidance reflect the proposed Statement of principles for determining financial penalties as set out in this consultation?

The Council suggests retaining in paragraph 2.18 the wording that a financial penalty should aim to "be proportionate to the nature of the breach of Licence condition and the harm caused." This still seems a suitable overarching principle to refer to in that paragraph and no good reason is given for removing it.

Financial key event reporting

Reporting of ownership and interests in gambling businesses

Q67: To what extent do you agree with the proposed change at Licence Condition 15.2.1 paragraph 2(a) to add the requirement to report 5% or more direct or indirect ownership of share capital, to reflect a risk-based approach? Neither agree nor disagree

The proposed amended wording of licence condition 15.2.1 paragraph 2(a) is, by no longer only applying to bodies having share capital, likely to particularly impact on the lotteries sector. As a result of the link between the lotteries sector and good cause funding, licensees in the lotteries sector are often charitable organisations set up under mechanisms such as companies limited by guarantee, Charitable Incorporated Organisations (CIO/SCIO) or under Royal Charter.

The reason the consultation gives for introducing the amended requirements is to address issues arising from the challenge of regulating complex, global businesses where identification of ownership and control may be unclear. Whilst this may well be a reason for introducing the proposed changes in the gambling sector generally, the Council suggests that there seems less need for these changes in respect of the lotteries sector given (a) the different nature of organisations in the lotteries sector, (b) there is less risk of owners/controllers trying to influence decisions to create profit, and (c) many operators will already also be getting overseen by the Charity Commission/OSCR.

The Council is concerned that the implementation of the new 15.2.1 in the lotteries sector could introduce disproportionately onerous burdens on non-commercial licensees, and questions whether the value the Commission would gain in respect of requiring such information from the lotteries sector is proportionate to the burdens being introduced on that sector.

The Council therefore suggests that the Commission considers retaining the existing 15.2.1 in respect of the lotteries sector, even if the new requirements are introduced in the other gambling sectors.

Page 73 of the consultation said, “In this section, new or amended text is shown in bold, deleted text is struck through.” This was not the case in respect of the proposed amendments to licence condition 15.2.1 paragraph 2 as, although a few additional words were shown in bold in the consultation, other additional words, including the entire proposed introduction of new paragraphs b, c and d were presented in plain text as if they were already requirements of the LCCP. This may well have caused people reviewing the consultation to not notice the proposed greatly increased scope of the current 15.2.1 paragraph 2 requirements.

Q68: To what extent do you agree with the proposed change to Licence Condition 15.2.1 paragraph 2(b) to add the requirement to report 5% or more direct or indirect control of the voting rights of the licensee, to reflect a risk-based approach? Strongly disagree

For the reasons set out in response to Q67, the Council suggests that the Commission considers retaining the existing 15.2.1 in respect of the lotteries sector, even if the new requirements are introduced in the other gambling sectors.

The new 15.2.1 paragraph 2(b) will impact particularly on the lotteries sector, especially as the effect is to include entities which don't have share capital.

It seems unclear from the consultation what the Commission mean by "voting rights" for the purpose of the new paragraph 2(b). If that is intended to have the same meaning as paragraph 14 of Schedule 1A to the 2006 Companies Act, it may help to avoid confusion to expressly state this. It would also be helpful to have some examples of the Commission's interpretation of how this provision is intended to apply to companies not having share capital, for example companies limited by guarantee. Would the Commission in those circumstances expect to be notified of all members of the company limited by guarantee (assuming there are less than 20 members)? Or would the Commission expect to be notified of all the Trustees/directors of the company (if the company limited by guarantee is a Trust having less than 20 Trustees/directors)? Or would the commission expect to be notified of both all members of the company limited by guarantee, and all of its Trustees/directors? The bureaucracy involved with licensees in the lotteries sector dealing with such administration seems disproportionate to any benefit the Commission seems likely to obtain from obtaining such information.

The terminology proposed to be used at the beginning of the new requirements of subparagraphs a-d of paragraph 2 of 15.2.1 is inconsistent, which also seems likely to result in confusion. Subparagraphs a and d begin with the word "becomes". This wording mirrors that used in the present paragraph 2 of 15.2.1, which also says "becomes". Equivalent wording is missing from paragraphs b and c. The practical effect of this seems to be that, if the proposals come into force, for situations falling within paragraphs a and d these would only need reported to the Commission as a key event under those subparagraphs in the event they arose after the new LCCP requirements had come into force. For example, the draft wording for paragraph 2a is "becomes a direct or indirect shareholder holding 5% or more of the issued share capital of the licensee". If an entity was already an indirect shareholder holding 5% or more of the issued share capital of the licensee and this had not already been notified to the Commission under this paragraph by the time the new requirements entered into force (given such indirect shareholding was not previously mentioned in this paragraph), it would seem this would still not need notified to the Commission under this new paragraph, on the basis they had not "become" such an indirect shareholder after the new requirements came into force, they were already such a shareholder. It would only be if someone "became" such a shareholder after the new requirements came into force that it would need notified to the Commission as a key event. The same applies to paragraph d, given that it also uses the word "becomes". Subparagraphs b and c, however, do not refer to "becomes". This would seem to have the effect that if categories b and c were already existing before the new requirements had come into force, they would nevertheless still need reported to the Commission within 5 working days of the new requirements coming into effect. This would effectively be introducing a retrospective element covering factual situations which already exist. The Council presumes that this is not be the intention of the Commission, which ought to be that such situations are notified to it as key events if they actually started to occur after the new provisions had come into effect. In light of the above, the Council suggests subparagraphs b and c should be amended along the following lines to make them consistent with the wording and effect of subparagraphs a and d:

Sub-paragraph b: "becomes a direct or indirect controller of 5% or more of the voting rights of the licensee"

Sub-paragraph c: "becomes directly or indirectly entitled to 5% or more of the dividends or profits of the licensee"

Unless this is done, for a company limited by guarantee having 20 members and a different 20 Trustees, depending on the Commission's clarification above on whether by voting rights they mean members and/or Trustees/directors, this would result in that company having a maximum of 5 working days after the provision came into force to notify the GC of all 20 members and all 20 Trustees.

Q69: To what extent do you agree with the proposed change to Licence Condition 15.2.1 paragraph 2(c) to add the requirement to report 5% or more direct or indirect entitlement to dividends or profits of the licensee, to reflect a risk-based approach? Strongly disagree

For the reasons set out in response to Q67, the Council suggests that the Commission considers retaining the existing 15.2.1 in respect of the lotteries sector, even if the new requirements are introduced in the other gambling sectors.

The new 15.2.1 paragraph 2(b) will impact particularly on the lotteries sector, especially as the effect is to include entities which don't have share capital.

It seems unclear from the consultation what the Commission mean by being "directly or indirectly entitled to 5% or more of the dividends or profits of the licensee". It would help avoid confusion to have more guidance on this, particularly how this is intended to work in situations where the licensee is itself a charity as may often be the case in the lotteries sector.

Please refer also to the response to Q68 above.

Q70: To what extent do you agree with the proposed change to Licence Condition 15.2.1 paragraph 2(d) to add the requirement to report becoming 5% or more direct or indirect beneficial owner of the licensee, to reflect a risk-based approach? Strongly disagree

For the reasons set out in response to Q67, the Council suggests that the Commission considers retaining the existing 15.2.1 in respect of the lotteries sector, even if the new requirements are introduced in the other gambling sectors.

It may be helpful for the Commission to signpost definitions of beneficial ownership, and indirect beneficial ownership, prior to this subparagraph being introduced.

Q71: To what extent do you agree with the proposed new wording at Licence Condition 15.2.1 paragraph 2(a) to add the requirement to report 5% or more direct or indirect ownership of share capital? Strongly disagree

See the response to Q67 above.

Q72: To what extent do you agree with the proposed new wording at Licence Condition 15.2.1 paragraph 2(b) add the requirement to report 5% or more direct or indirect control of the voting rights of the licensee? Strongly disagree

For the reasons set out in response to Q67, the Council suggests that the Commission considers retaining the existing 15.2.1 in respect of the lotteries sector, even if the new requirements are introduced in the other gambling sectors.

The new 15.2.1 paragraph 2(b) will impact particularly on the lotteries sector, especially as the effect is to include entities which don't have share capital.

See the response to Q68 above for a discussion about the meaning of "voting rights" and about the terminology used in the proposed new wording.

Q73: To what extent do you agree with the proposed new wording at Licence Condition 15.2.1 paragraph 2(c) to add the requirement to report 5% or more direct or indirect entitlement to dividends or profits of the licensee? Strongly disagree

For the reasons set out in response to Q67, the Council suggests that the Commission considers retaining the existing 15.2.1 in respect of the lotteries sector, even if the new requirements are introduced in the other gambling sectors.

The new 15.2.1 paragraph 2(b) will impact particularly on the lotteries sector, especially as the effect is to include entities which don't have share capital.

See the response to Q69 above for a discussion on the meaning of "directly or indirectly entitled to 5% or more of the dividends or profits of the licensee" and about the terminology used in the proposed new wording.

Q74: To what extent do you agree with the proposed new wording at Licence Condition 15.2.1 paragraph 2(d) to add the requirement to report becoming 5% or more direct or indirect beneficial owner of the licensee? Strongly disagree

For the reasons set out in response to Q67, the Council suggests that the Commission considers retaining the existing 15.2.1 in respect of the lotteries sector, even if the new requirements are introduced in the other gambling sectors.

It may be helpful for the Commission to signpost definitions of beneficial ownership, and indirect beneficial ownership, prior to this subparagraph being introduced.

Q76: Can you foresee any difficulties for gambling licensees in complying with the proposed change to Licence Condition 15.2.1 paragraph 2(b) to add the requirement to report 5% or more direct or indirect control of the voting rights of the licensee? Yes

The Council foresees problems for the lotteries sector and suggests that it is exempt from the new requirements, remaining subject to the existing 12.2.1 requirements. The reasons for this are set out in response to Q68.

Q77: Can you foresee any difficulties for gambling licensees in complying with the proposed change to Licence Condition 15.2.1 paragraph 2(c) to add the requirement to report 5% or more direct or indirect entitlement to dividends or profits of the licensee? Yes

The Council foresees problems for the lotteries sector and suggests that it is exempt from the new requirements, remaining subject to the existing 12.2.1 requirements. The reasons for this are set out in response to Q69.

Q78: Can you foresee any difficulties for gambling licensees in complying with the proposed change to Licence Condition 15.2.1 paragraph 2(d) to add the requirement to report becoming 5% or more direct or indirect beneficial owner of the licensee? Yes

The Council foresees problems for the lotteries sector and suggests that it is exempt from the new requirements, remaining subject to the existing 12.2.1 requirements. The reasons for this are set out in response to Q70.

Q83. To what extent do you agree with the proposed new requirement at Licence Condition 15.2.1 paragraph 6 to add any type of financial arrangement entered into with any persons not authorised by the FCA? Disagree

If a licensee or group company were to borrow from a reputable overseas bank, that bank may not be authorised by the FCA. The Council suggests that the Commission considers inserting "FCA, European Banking Authority or equivalent".

Q84: To what extent do you agree with the proposed new wording at Licence Condition 15.2.1 paragraph 6 to add any type of financial arrangement entered into with any persons not authorised by the FCA? Disagree

See response to Q83

Q85: Can you foresee any difficulties in complying with this requirement to add any type of financial arrangement entered into with any persons not authorised by the FCA? Yes

See response to Q83