

A review supported by the  
Better Regulation Executive  
and National Audit Office

# Gambling Commission:

A Hampton Implementation Review Report

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## Foreword

Philip Hampton's report: Reducing administrative burdens: effective inspection and enforcement, published in 2005, is one of the cornerstones of the government's better regulation agenda. The principles of effective inspection and enforcement set out in the report, putting risk assessment at the heart of regulatory activity, are designed to encourage a modern regulatory system which properly balances protection and prosperity. Since 2005, the Government has established an expectation that regulators will embed these principles in their approach to regulation.

In November 2006, the Chancellor of the Exchequer invited the National Audit Office and the Better Regulation Executive to develop a process of external review to assess how much progress regulators had made in implementing the principles of Hampton.

"Hampton Implementation Reports" covering the work of five major regulators were published in March 2008. The review process is continuing. At this point in the cycle we are publishing the results of reviews of three regulators, each of which has a significant impact on their specific economic sectors. Together, the Gambling Commission, the Medicines and Healthcare products Regulatory Agency, and the Animal Health agency cover a wide range of economic activity, and work to protect our interests. How they carry out their regulatory activities matters.

Full implementation of Philip Hampton's recommendations is a journey that could take several years. This review is a 'snapshot' in time of the progress of each regulator towards his vision.

Each of the reviews found examples of innovation and initiative by regulators who continue to move the regulatory agenda forward, as well as areas for further improvement.

The assessments were carried out by teams of reviewers with wide ranging experience and expertise in the field of regulation. Talking to a wide range of stakeholders, to staff at all levels within the regulator's organisation, through visits to business sites and analysis of data and papers, the review teams have reached the findings and conclusions set out in this report. The reports reflect the judgement of these review teams on the basis of the evidence put before them.

We would like to thank all of those who have continued to make these reviews a success. In particular, we are grateful to the regulators and their staff for providing support and making evidence available to the review teams, and to all the organisations that generously gave their time to offer evidence to the reviews. Finally, we are extremely grateful to all our reviewers, and their employers, for their involvement, enthusiasm and commitment to this project.



**Jitinder Kohli**  
Chief Executive  
Better Regulation Executive



**Ed Humpherson**  
Assistant Auditor General  
National Audit Office

## Summary and conclusions

This review is one of a series of reviews of regulatory bodies undertaken at the invitation of HM Treasury and focusing on the assessment of regulatory performance against the Hampton principles and Macrory characteristics of effective inspection and enforcement. It was carried out by a team drawn from the Better Regulation Executive (BRE), the National Audit Office (NAO), the Security Industry Authority (SIA), and the UK manufacturing employers' organisation EEF. See Appendix 1 for Review Team membership.

The Hampton report<sup>1</sup>, published in 2005, is one of the cornerstones of the Government's better regulation agenda and regulators have been working since then to embed his principles in their approach to regulation. This review process is designed to identify where a regulator is on the road to full implementation and the issues each needs to address to become Hampton-compliant.

The Review Team is grateful to the Gambling Commission (the Commission) for their support and commitment over the Review period. Staff working at every level in the Commission were very open to the Review process. We are also grateful for the contribution of the Commission's stakeholders for their helpful insights into the nature of the industry and the wider context within which the Commission operates.

## What we found

The Review Team concluded that the Commission is committed to implementing a regulatory regime that is consistent with the Hampton principles. We found that in a number of areas, however, the Commission currently falls short of regulation in the spirit of the Hampton principles. We have made relevant recommendations throughout this Report: for instance, in relation to developing

a fully risk-based approach and in improving economic modelling.

The Commission has only exercised full statutory powers since September 2007: while it has consulted extensively on proposals for carrying out its regulatory responsibilities, many of its plans have yet to take effect on the ground, and it is too early to comment on the impact of some of these. The Commission, having completed a significant task in licensing all relevant operators under a new regulatory regime, is entering a phase of consolidation. We believe that if current plans are successfully implemented (particularly proposals in relation to the more effective use of risk assessment as presented to us throughout the Review), it should be in a strong position to demonstrate the Hampton and Macrory principles throughout its work. We acknowledge the scale of the tasks confronting the Commission as a new regulator, and were impressed by the skills and commitment that the Commission's staff brought to bear in tackling these.

The Commission asked that it should be reviewed in October 2008, early in the cycle of Hampton Implementation Reviews taking place in 2008/09. Inevitably the findings of the Review reflect the fact that the regulator is at an early stage in its work. It also reflects the Commission's concern to quickly identify and address any issues regarding the achievement of full Hampton compliance early in the development of its work.

Amongst the challenges facing the Commission, we were interested in the nature of its relationship with its stakeholders, particularly from the gambling industry. The quality of this relationship is critical to the long-term success of the Commission in pursuing its statutory objectives. The quality of communication between the regulator and the industry remains a significant issue here. Difficulties in the relationship in part reflect a number of factors

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<sup>1</sup> Reducing administrative burdens: effective inspection and enforcement, Philip Hampton, HM Treasury, March 2005

associated with the Gambling Act 2005 which are unpopular with parts of the industry but fall outside the Commission's control. For instance, the introduction of a statutory requirement on the gambling industry to pay licensing fees which fully reflect the costs of the regulatory regime meant a very significant increase in costs for many of them<sup>2</sup>. The need to gather intelligence on an industry that is diverse both in the size of the businesses concerned and in their different business models has also been an issue. We believe that there is scope for developing more effective engagement, and many of our recommendations relate to better engagement with regulated stakeholders in relation to issues including risk, outcomes, and data requests. There is a need for a clear "narrative" – communicating the Commission's objectives, processes, and thinking, in a way that makes sense to the different elements in the gambling sector. We believe that this will be critical in ensuring the long-term effectiveness of the Commission as a regulator.

The following list and table summarise our specific findings:

- The Commission is publicly committed to implementing the principles of better regulation.
- The Commission has developed good and extensive procedures for consultation and engagement with businesses, for the better design of regulations.
- The Commission licensing staff showed a strong customer-focussed approach in their day-to-day relationship with businesses.
- The Commission is developing a clear intelligence-based view of the most important regulatory risks to the sector.
- The Commission is developing convincing plans to put risk assessment at the heart of its work as a regulator.
- The Commission is committed to the proportionate use of sanctions, adopting an advisory and supportive approach to businesses trying to be compliant.

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<sup>2</sup> Another factor that lie beyond the Commission's control is the requirement for multiple, partially overlapping, licences for gambling businesses: operational, premises, and personal licences.

## Issues for follow-up

The following table sets out the key issues that the Review Team believes the Commission needs to address to meet the Hampton criteria

more fully, measured against the some of the symptoms<sup>3</sup> we were looking for to provide evidence of Hampton compliance.

Issue to be addressed	Hampton symptom
<p><b>Improving the use of intelligence and risk-analysis</b></p> <p>The Review Team found that there is a good grasp of the main strategic regulatory risks facing the sector (many of which come from outside the licensed community). In general, decisions regarding the allocation of resources for enforcement in cases of non-compliance<sup>3</sup> followed from this assessment.</p> <p>The Review Team was not convinced that resources were always allocated accordingly in some other cases including inspection activity and policy-making. In particular, stakeholders expressed some confusion as to the extent to which the Commission used risk assessment to set inspection plans.</p> <p>The Commission will shortly be consulting on the details of a revised approach to the implementation of their risk-assessment framework. We strongly support their commitment to reviewing their approach to risk: and believe that this is an opportunity to engage with stakeholders more effectively.</p> <p>The Commission needs to continue to work to ensure that its activities are prioritised according to risk, and to communicate what this will mean in practice for individual operators.</p>	<ul style="list-style-type: none"> <li>Regulators, and the regulatory system as a whole, should use comprehensive risk assessment to concentrate resources on areas that need them most.</li> </ul>
<p><b>Better focus on outcomes</b></p> <p>The Review Team was impressed by the extent to which staff within the Commission at all levels (and indeed the Commission's stakeholders) have a high awareness of the statutory licensing objectives, especially given the short timescale.</p> <p><i>Continued on next page</i></p>	

<sup>3</sup> From Hampton Implementation Reviews: Guidance for Review Teams, National Audit Office and Better Regulation Executive, July 2008

<sup>4</sup> The Commission's Compliance Managers inspect and advise business on how to comply with the law; decisions as to formal enforcement action are referred by them to Gambling Commission headquarters.

Issue to be addressed	Hampton symptom
<p><i>Continued from previous page</i></p> <p>However, the Review Team felt that there was confusion about the wider outcomes associated with these objectives, and found a tendency to focus on output measures in public statements of the Commission’s achievement (for instance, the number of licences issued).</p> <p>Greater clarity in defining and measuring the outcomes associated with the objectives would help the Commission to, amongst other things:</p> <ul style="list-style-type: none"> <li>– inform performance targets;</li> <li>– identify and understand trends in the gambling sector;</li> <li>– assess the impacts of its regulatory activity;</li> <li>– clarify those occasions where there might be a need for the Commission to take additional action.</li> </ul> <p>There are challenges here, but the Commission should work to articulate the outcomes that it is seeking to effect better. Quantification of long-term trends may not be easy in the first instance, but the scope for using indicative short-term data and measures should be explored. Some suggestions for what might be done are set out in the relevant section of the Report below.</p>	<ul style="list-style-type: none"> <li>• The regulator has clear outcome-focused objectives and targets which relate to its statutory objectives / overall aim and which are understood by its staff and stakeholders.</li> <li>• The regulator uses a mix of output and outcome measures, as well as short-term and long-term measures.</li> </ul>
<p><b>The Commission could be clearer about its responsibilities with regard to the economic vitality of its regulated sector</b></p> <p>The gambling sector, particularly through employment and tax revenues, makes a significant contribution to the UK economy.</p> <p>The Review found some conflicting views within the Commission as to the extent to which it is responsible for setting a regulatory framework within which (other things being equal) members of the gambling industry can operate effectively as businesses.</p> <p>While some staff accepted this, other parts of the Commission appeared to the Review Team to be less comfortable with this role. We believe that this may be partly due to perceived sensitivities regarding the ethical issues associated with the gambling sector.</p> <p>The Commission should work to embed a more consistent recognition of the ways in which its actions can have an economic impact, and to improve the economic modelling of the likely impacts of regulations on the sector.</p>	<ul style="list-style-type: none"> <li>• Regulators should recognise that a key element of their activity will be to allow, or even encourage, economic progress and only to intervene when there is a clear case for protection.</li> <li>• The regulator undertakes robust cost-benefit analyses and impact assessments.</li> </ul>

Issue to be addressed	Hampton symptom
<p><b>Providing clear, tailored guidance</b></p> <p>We were impressed with the way in which the Commission’s staff work with individual businesses, particularly smaller businesses, to help explain the regulations. However, we found that some of the smaller businesses we interviewed who had not had direct contact with the Commission found some of its requirements daunting.</p> <p>The Commission has done some work to communicate imaginatively in these cases – for instance, by text message – but needs to continue working on guidance and approaches that meet the needs of harder-to-reach businesses.</p>	<ul style="list-style-type: none"> <li>• Advice and guidance are available in a range of formats and are easily accessible and accessed – high levels of market-penetration are achieved.</li> </ul>
<p><b>Improving the quality of data requests, and communicating why they are required</b></p> <p>Many stakeholders questioned the quantity of data requested by the Commission.</p> <p>The reasons for the data required in returns by the Commission are not well understood and this causes, in some cases, resentment and misunderstanding about its work. We believe that the present lack of understanding and consequent ill-feeling is a significant hurdle to an effective relationship with the regulated sector.</p> <p>We understand the case that much of this data is essential for the Commission to build its intelligence regarding the sector; but the rationale for particular items of data is not always clear.</p> <p>We welcome the Commission’s commitment to review the data requirements in 2010 (once two sets of annual data returns have been made). We believe that this should be a systematic review of all the data requirements, and that changes should be implemented in good time for the 2010-11 data collection cycle (ie. the fourth year of data collection).</p> <p>The Commission should also take a targeted approach to explain the data returns that <i>are</i> required, both to Commission staff and to regulated businesses.</p>	<ul style="list-style-type: none"> <li>• The purpose of data collection is clear and understood by businesses and used when information is not available from existing sources.</li> <li>• Forms, data requests and record-keeping requirements are clear and targeted and risk-assessment is used to determine the level of information required.</li> </ul>

Issue to be addressed	Hampton symptom
<p><b>Working in partnership with local authorities</b></p> <p>The Commission and local authorities are, in effect, co-regulators of gambling. The distinction between their respective licensing roles is not as clear as it might be: for instance, there is no ‘natural’ lead role in cases where a compliance issue is relevant to both a premises licence (issued by a local authority) and an operational licence (issued by the Commission). A concordat with local authorities was agreed in 2007, but this area of work needs further attention.</p> <p>Ideally, the Commission and local authorities should be able to work together as partners, with clarity as to their respective roles. There are challenges given overlaps in the legislation, and the many other priorities that local authorities have to address in practice.</p> <p>The Review Team believes that the Commission should seek to work closely with local authorities to exchange practical ideas through, for instance, secondments, to ensure a better alignment between both parties’ strategic interests.</p>	<ul style="list-style-type: none"> <li>• The regulator co-ordinates with other regulators operating in the same sector.</li> </ul>

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## Introduction

- 1 This review of the Commission aims to provide a structured check on performance against the principles<sup>5</sup> and characteristics set out in the Hampton and Macrory reports (see Appendix 2)<sup>6</sup>. The team reviewed the Commission against a performance framework<sup>7</sup> developed by the Better Regulation Executive and the NAO, which provides a guide for reviewers on the kind of evidence to look for and questions to consider. However, the process is not the same in scope or depth as a full value for money audit of economy, efficiency and effectiveness and the Review Team's conclusions are based on a combination of evidence and judgement. A brief description of the scope of the review and methods employed is at Appendix 3.
- 2 The Commission was established by the Gambling Act 2005. There are 10 Commissioners who are appointed by the Secretary of State for Culture, Media and Sport. The Commission is chaired by Brian Pomeroy and the Chief Executive is Jenny Williams.
- 3 The Gambling Act integrated the regulation of various gambling sectors under the oversight of the Commission. The Gambling Act 2005 also gave local authorities a role in licensing gambling premises.
- 4 The Commission was formally established in October 2005, and became fully operational on 01 September 2007. Prior to that, the Commission retained powers under the 1968 Gaming Act, and carried out regulatory activity under this Act but only for the casino, bingo, society lotteries and machine supplier sectors. The vast majority of the operators it currently regulates only came under regulation by the Commission in September 2007.
- 5 The Commission was brought in to bring a unified approach to a previously disjointed regulatory regime and was set up to have wider and more flexible powers, with additional responsibility for the regulation of remote gambling.
- 6 The Commission covers the whole of Great Britain (England, Scotland and Wales), and also has responsibility for remote gambling. However, remote operators only fall within scope of the licensing regime if at least one item of 'remote gambling equipment' is located in the UK. It has no control over offshore remote gambling.

### Resources

- 7 The Commission is a Non-Departmental Public Body sponsored by the Department for Culture, Media and Sport (DCMS). Its regulatory operations, including the costs of enforcement against illegal gambling by unlicensed operators, are funded entirely through the fees it obtains through licensing and certification of the gambling industry, although some DCMS grant-in-aid (GIA) was paid to cover the Commission's start up costs and is now paid to support some of the Commission's work relating to research. The Commission's financial performance reflects the fact that it has been in start up mode. The Commission's annual report for 2007/08 shows income from all sources of £11.57m with GIA funding of £3.11m. Total expenditure for the Commission was £16.7m in the same period. However, this period covered significant start up activity and the re-licensing of the industry. The new regulatory regime only came into operation in the second half of 2007/08. Estimated total expenditure for 2008/09 is currently £15.7m.

<sup>5</sup> Reducing administrative burdens: effective inspection and enforcement, Philip Hampton, HM Treasury, March 2005

<sup>6</sup> Regulatory Justice: making sanctions effective, Final report, Professor Richard B Macrory, November 2006

<sup>7</sup> Hampton Implementation Reviews: Guidance for Review Teams, National Audit Office and Better Regulation Executive, July 2008

- 8** At the peak of its workload preparing for the implementation of the 2005 Act, the Commission employed a maximum of 300 staff, although this has been reduced to around 235 now that the majority of the re-licensing of the industry under the new Act has been completed.

### The Gambling Industry

- 9** The gambling industry had an estimated turnover of over £84.2 billion in 2006/07. Gross gambling yield (i.e. the amount retained by operators after the payment of winnings but before the deduction of the costs of the operation) was estimated to be £9.9 billion in 2006/07. Estimates suggest that, of this £9.9 billion, 25% was generated by the National Lottery and most of the remainder by those industries which are regulated by the Commission. The UK gambling industry employed 96,000 people in 2003-4.
- 10** The gambling industry is highly fragmented. The Commission has issued licences to some 3800 operators, 30 of which control around 80% of the industry; the vast majority of the licensed operators are small operators. About 50% of licences are for single site operators.
- 11** The structure of the main industry sectors differs:

### Betting

- 12** In 2007/08 there were 579 on course and 801 off-course bookmakers licensed and an estimated 8,800 betting shops in the UK. Five operators account for 7,300 betting shops. In 2006/07, off course turnover was £36.6 billion and on course turnover £864 million.
- 13** According to the Association of British Bookmakers (ABB), c. 20% of adults in the UK place a bet at a betting shop each year. The vast majority of betting is on horse

racings, but increasing amounts are bet on other sports and on numbers events (e.g. the Irish lottery). The industry employs c. 40,000 people.

### Bingo

- 14** In 2007/08 there were 675 bingo clubs in the UK, Gala Bingo and Mecca Bingo control 43% of the industry by number of clubs. The rest of the market is fragmented between small and medium-sized operators.
- 15** The amount staked at bingo halls was £1.62 billion in 2007/08. The trend in recent years has been downwards (£1.826 billion and £1.82 billion in 2005/06 and 2006/07 respectively).

### Casinos

- 16** In 2007/08 there were 144 casinos in the UK and 1,156 casino personal licence holders. The industry is dominated by three companies, namely Gala, which has 32 casinos, Grosvenor Casinos (Rank) which has 32 and Stanley Casinos/ Stanley Leisure/Genting International which has 46.
- 17** There were 16.2 million visits to casinos in 2007/08, up 6.6% (1.1 million) on the previous year. Total money staked was £4.4 billion, of which the total house win was £656.5 million.

### Gaming machines and arcades

- 18** This sector of the industry consists of gaming machine suppliers and manufacturers, adult gaming centres and family entertainment centres. There are different types of machines, categorised based on the maximum stake and payout. Adult gaming centres, family entertainment centres (licensed and unlicensed), casino, betting, and bingo operators are entitled to offer a set number of gaming machines of certain categories, depending on their premises.

- 19** The Commission has issued some 336 licences for family entertainment centres and 661 licences for adult gaming centres in the UK to 748 operators. There are four main operators, but most are part of smaller groups and, in many cases, they are owner operated. Adult gaming centres (essentially amusement arcades) are more likely to be found on high streets.

### **Lotteries**

- 20** Excluding the National Lottery, which is not regulated by the Commission, there were a total of 9,462 lotteries conducted in 2007/08 by charities, sporting clubs, cultural bodies and others, in some cases using commercial external lottery managers. These generated £170 million in ticket sales.

### **Remote gambling**

- 21** Remote gambling, including internet and phone betting, were new additions to the regulatory regime. Offshore provision of gambling is not however regulated by the Commission. Approximately 300 licences have been issued for remote gambling activities, although the majority are for telephone betting, rather than for internet based services.

## The Hampton vision

**23** Both the Hampton and Macrory reports are concerned with effective regulation – achieving regulatory outcomes in a way that minimises the burdens imposed on business. Key to this is the notion that regulators should be risk-based and proportionate in their decision-making, transparent and accountable for their actions and should recognise their role in encouraging economic progress.

### Risk-based

- 24** The work of the Commission, based squarely on the requirements of the Gambling Act, deals with a number of key risks.
- a the risk that gambling might be a source of crime and disorder, or be associated with it;
  - b the risk that children or other vulnerable persons might be harmed or exploited to gambling. (The risk posed by the damage to individuals and families by “problem gambling”<sup>8</sup> is particularly important here); and
  - c the risk of consumer detriment where gambling is not conducted in a fair and open way.
- 25** It is a regulator’s responsibility to make the best use of the evidence available to it in determining its work programme for the better protection of the public: the evidence relating to these risks can be less strong here than in other sectors, where the nature of the risks are more tangible (for instance, where physical health is at risk), and where the relevant economic sectors are better understood.
- 26** However, it is important to work within these constraints to allocate resources appropriately. As well as the immediate

benefits that arise from allocating resources to cases of most risk, taking action where it is likely to have the most beneficial effect, the proportionate allocation of resources according to risk can also send out an important message to the regulated community. It can create an incentive for businesses to comply, reducing the risks associated with their work.

We found:

- **a strong commitment to develop a clear sense of the strategic risks posed by the sector;**
  - **that contradictory communications about the way in which risk assessment will operate in practice have damaged the credibility of the Commission’s work in some cases;**
  - **enforcement resources (investigation) were allocated according to strategic risks, but the link between risk assessment and the use of other resources (notably the activities of compliance managers and policy-makers) are at this stage less clear.**
- 27** The Commission is aware of these issues, and is working to put intelligence and risk assessment at the heart of its operations. We strongly support this work, and believe that the Commission should make clear communication of it plans to the industry a priority: both in general terms, as well as the implications of the system for individual businesses.
- 28** The Commission acknowledges that some difficulties in its early work here have delayed the implementation of a fully risk-based system; we strongly support its commitment to put this right, but recognise

<sup>8</sup> Defined by the British Gambling Prevalence Survey as “... gambling to a degree that compromises, disrupts or damages family, personal or recreational pursuits”.

there will always be a need for review and improvement in the light of developing experience.

## Transparency and Accountability

- 29** Stakeholders commented favourably on the extent to which the Commission consults on key points of policy (though there were some complaints about the sheer volume of material consulted upon in the Commission's first 18 months), but they expressed doubts as to the extent to which their views were taken on board, or at least had been reflected upon, in the formal responses to consultation published by the Commission.
- 30** The Commission consults routinely and extensively on all its major proposals. It actively seeks out stakeholders' views on its proposals, and holds a number of workshops with them. Where stakeholders' views may conflict (and there are a number of issues where sectoral views will be fundamentally opposed), it consults with them separately where appropriate. A number of stakeholders were complimentary about the methods used, and the extent to which particular members of staff worked with them on key issues.
- 31** We found, nevertheless, a common feeling that the Commission was not transparent on key decisions, nor the rationale for its response on key issues following specific consultations. Stakeholders believed that the Commission could do more to provide detailed feedback on its thinking before proceeding with the response. This in part reflects the sheer scale of consultation involved over the critical 18 months (as the Commission has worked to develop a new regulatory regime from scratch); and that, while the Commission has been able to consult upon the detail of the implementation of changes brought in by

the Gambling Act 2005, it has had limited control over their substance which reflected provisions in the Act.

- 32** We believe however that the Commission should explore means of making its internal procedures more open. There are a range of options here: for instance, the Food Standards Agency holds Board meetings in public, and makes its proceedings accessible online in various formats. This has helped clarify its internal deliberation processes for stakeholders: helping illustrate the extent to which issues raised in consultation are considered at the highest level within the organisation, even where the Agency decides to stick to the approach initially proposed. Clearly there are some sensitivities where classified or otherwise confidential material is under discussion; in similar circumstances, other regulators have used a combination of open and closed sessions, as well as redacted material to deal with those cases where complete openness might be inappropriate.

We found that:

- **the Commission's procedures and policy in relation to consultation are, in general, strong;**
- **nevertheless, perceived failures in communication between the Commission and its stakeholders could become a significant obstacle to an effective working partnership that is founded on mutual understanding.**

- 33** Again, the Commission is aware of these issues, and we hope that forthcoming opportunities will be seized to improve its direct engagement with its stakeholders now that its operations – following the initial requirement to develop a new regulatory framework and relicence the industry – are entering a new “steady

state” of operation. Some specific recommendations are made throughout this Report.

### Economic progress

- 34** The Commission works in an area where the acceptable level of risk is contested and debates are polarised. In these circumstances, the status of Hampton’s recommendations – all of which revolve in some sense around the application of risk – can sometimes be called into question.
- 35** DCMS’s funding agreement with the Commission for 2005-8 states that: “Gambling brings with it... inherent risks of personal and social harm through excessive play. Research has revealed that only a small proportion of adults suffer significant levels of harm, but it is the Government’s view that the reduction of harm should take precedence over the maximisation of innovation, consumer choice, and economic gain, which represents its strategy in relation to leisure activities that involve no such risks...”.
- 36** The Commission’s position is however no different to that of any other regulator, all of whom have an obligation to seek to reduce harm, but must at the same time maintain an awareness of the needs of business and other stakeholders. No regulator can make an effective assessment of risk without such a calculation.
- 37** As is the case with many regulators, the Commission is subject to the statutory duties to have regard to the Principles of Good Regulation and the Regulator’s Compliance Code set out under the Legislative and Regulatory Reform Act 2006. This recognises that regulators can have a significant impact on the economic conditions under which regulated businesses operate. This is recognised by the statutory Code of Practice for Regulators (the “Regulators’ Compliance Code”) which states that “Regulators should recognise that a key element of their activity will be to allow, or even encourage, economic progress and only to intervene where there is a case for protection”<sup>9</sup>.
- 38** It is for the Commission to take a lead in ensuring a more sophisticated level of debate about regulatory risk in gambling: inevitably this will entail a recognition of the economic benefits that the sector can bring. This is inherent to any decision-making on the basis of cost-benefit analysis. In some of our discussions with Commissioners and staff, however, it was clear that the economic benefits of the sector were not understood, or were underestimated.
- 39** The Commission made it clear to us that it does not regard its role as one of “promoting or encouraging gambling” as it has a specific statutory duty to permit it subject to reasonable consistency with the licensing objectives: the Review Team agrees that this is clearly not its role. However, there needs to be a clearer recognition of the ways in which its actions as a regulator can have an economic impact. We comment below, under “Design of Regulations”, on some of the related issues associated with impact assessment.

We found that:

- **attitudes within the Commission regarding its responsibilities in relation to economic progress were not consistently understood;**
- **that the policy imperatives behind the prevention of problem gambling in some cases seemed to obscure an understanding of the economic benefits resulting from the sector’s work (for instance, in providing employment).**

<sup>9</sup> Regulators’ Compliance Code: Statutory Code of Practice for Regulators, BERR, 2007, p.11.

## Design of regulations

### Hampton principles

***“All regulations should be written so that they are easily understood, easily implemented, and easily enforced, and all parties should be consulted when they are being drafted”***

***“When new policies are being developed, explicit consideration should be given to how they can be enforced using existing systems and data to minimise the administrative burden imposed”***

## Key findings

- **While the Commission generally conducts impact assessment, the quantification of costs and benefits using all available sources could be significantly improved.**
- **The Commission seeks to take a principles-based approach to regulations; but this means that the regulations can, in practice, be over interpreted by compliance managers.**

## Background

**40** The Commission takes many of its regulatory responsibilities directly from the Gambling Act 2005. This is primary legislation, and the Commission has no discretion over its application. It advises the Secretary of State for Culture Media and Sport about, but does not itself impose, regulations through secondary legislation under the Act. The Commission is responsible for the Licensing Conditions and Codes of Practice with which licence-holders must comply. The Commission also has a role in interpreting the practical application of the Act for local authorities, under its statutory power to give guidance to which licensing authorities must have regard.

## Review Findings

**While the Commission generally conducts impact assessment, the quantification of costs and benefits using all available sources could be significantly improved**

- 41** The Commission has conducted a large number of consultations since its creation. Generally speaking, Impact Assessments (IAs) accompany these, but the costs and benefits associated with them are not always quantified. There have been difficulties in the early stages, given the lack of data on some of the sectors involved; however, we hope that the Commission’s increasing evidence base will now be put to use as a basis for thorough economic modelling of the impact of its proposals.
- 42** In addition to the use of data from regulatory returns, the Commission has a number of options open to it: we believe that in-depth work with specific businesses,

the use of existing research and open sources, and (where necessary), making use of explicit assumptions as a basis for modelling and consulting upon them, could all help provide a good basis for effective and transparent impact assessment.

**The Commission seeks to take a principles-based approach to regulations; but this means that regulations can, in practice, be over interpreted by compliance managers**

- 43** The Commission seeks to take a principles-based approach to the licence conditions. For instance, they specify that licensees must make information readily available to their customers on how to gamble responsibly, but does not specify the exact form the way that it should be made available. This allows for a flexible interpretation of the law to suit different businesses' conditions and needs.

- 44** A number of stakeholders suggested to the Review Team that the meaning of the conditions were being over-interpreted by compliance managers in practice, in a way that could also make for inconsistency in the application of the law. For instance, information on problem gambling is commonly made available in toilets, in a way that allows customers to pick up leaflets (that they may not wish to be seen consulting) in private. There is no requirement to do so; but issues like this, and the display of posters, appears to have been interpreted rigidly in some cases despite the flexibility of the underlying statutory requirements; we recognise that the Commission is aware of this issue, however, and has plans to deal with it.

## Advice and guidance

### Hampton principle

*“Regulators should provide authoritative, accessible advice easily and cheaply.”*

### Key findings

- The Commission has given good tailored advice to prospective licensees through its advice line; and the sense of customer service to licensees across the organisation is strong.
- There have however been occasions where the Commission has not been able to give guidance on key regulatory issues in as timely a way as stakeholders would have liked.
- More could be done to tailor communications of advice to individual sectors, and in particular to smaller operators without dedicated compliance staff.
- The nature of the Commission’s relationship with local authorities is not clear.

### Background

- 45 The Commission gives advice and guidance to businesses and to regulatory partners by a number of means, for instance:
- through the publication of statutory documents specifying the general requirements on licensees, such as the Licence Conditions and Codes of Practice (LCCP);
  - through guidance accompanying licensing forms;
  - through face to face advice on compliance visits;
  - through statutory guidance to local authorities regarding their responsibilities under the Gambling Act;
  - by email and telephone through the Commission’s Enquiry Unit.

### Review Findings

**The Commission has given good tailored advice to prospective licensees through its advice line; and the sense of customer service to licensees across the organisation is strong**

- 46 The Review Team was particularly impressed with the work of licensing and enquiry staff who had supported businesses in working through the paperwork required for the implementation of the new Act. Staff had a clear understanding of what would constitute a proportionate requirement (for instance, what smaller businesses would need to submit in order to meet the requirements for the submission of business information which was part of the licensing process). The Commission have also given specific help to licensees on form-filling over the phone or in some cases, face-to-face at their offices.

- 47** A strong spirit of customer service underpins this part of the Commission’s operation, and this has resulted in a series of continuous improvements which have, for instance, been used to improve the quality of forms and material in “Frequently Asked Questions” section of the Commission website.
- 48** Contact details for the Enquiry Team are clearly displayed on the Commission’s website and the Frequently Asked Questions are helpfully presented by sector. Some stakeholders thought that the website could be better organised, but we understand that the Commission is working to improve it.
- 49** The Commission has explored innovative approaches to reaching the smaller end of the industry, such as text message updates. We commend this approach and urge efforts on this to continue.

**There have however been occasions where the Commission has not been able to give guidance on key regulatory issues in as timely a way as stakeholders would have liked**

- 50** Stakeholders were concerned, irrespective of this, that the Commission had failed to give timely guidance in some key interpretation and operational areas over its first year of operation. The Commission is aware of these concerns, however, and we recognise that plans are in hand to ensure that advice is given promptly as issues become topical, as revealed through day-to-day compliance work or that of the Enquiries Team. To take one example, the Commission has responded quickly to emerging issues relating to cases where private houses are offered as prizes in lotteries, owing to pressures with the housing market.

**Good Practice – work of the Gambling Commission Licensing Team**

The Commission recognised that the introduction of the new regulatory regime would be challenging for many small operators and that those operators would need support in completing applications and understanding the new arrangements.

A dedicated Enquiries Team was established to support this. Working closely with the Licensing Team, advice was provided to operators, including working with operators to complete applications, responses were developed to frequently asked questions and common problems with the Commission’s processes were identified.

A ‘continuous improvement’ approach was developed, with lessons being fed back into an internal review group. This allowed the Commission to adapt its processes, including simplification of the application forms and processes.

**More could be done to tailor communications of advice to individual sectors, and in particular to smaller operators without dedicated compliance staff**

- 51** Some of the material issued by the Commission can be daunting to smaller businesses. For instance, the form regarding applications for operating licences is lengthy, and requires detailed financial information to determine the extent to which the business is able to support the financial risks that are inevitable in gambling. Many of the stakeholders that we spoke to questioned the need for this information, particularly in the case of smaller firms who

may not be able to provide the analysis required to generate the data without outside help. The Review Team found that Commission staff offered good advice to businesses, talking them through those parts of the form which are relevant to them, and supporting them through the process of completion (including, for instance, telling them the minimum information that would be required according to the size of the business). Some of these messages however had not reached some of the operators that we spoke to, and we believe the Commission could provide more tailored plain English guidance on the completion of forms, which could be usefully broken down by sector, on its website. The Commission has already carried out one review of the forms, surveying a sample of users and making a number of changes, but we also believe that, once the licensing system is more established, the forms should be given a more systematic review to establish whether business is still experiencing problems with them in practice.

### **The nature of the Commission's relationship with local authorities is not clear**

- 52** Gambling is effectively co-regulated by the Commission and by local authorities. The Gambling Act 2005 confers a duty on the Commission to issue operating and personal licences; local authorities must however license the specific premises within which gambling takes place.
- 53** The respective roles of the Commission and local authorities are not totally clear, particularly on a operational day-to-day basis, despite the attempt to clarify this via a concordat agreed with LACORS (the Local Authority Co-ordinators of Regulatory Services) in October 2007. (This is partly a result of the legislation itself (which requires parallel licensing processes) but the Review Team believes that the Commission could do more to set a strategic lead for local authorities. Gambling licensing, in general, represents a small volume of work for licensing departments in local authorities, and there is a real challenge for the Commission here.
- 54** While local authorities have productive relationships in their day-to-day work with the Commission's regional compliance managers, communication at a higher level in the organisation is not effective. The Review Team believes that recent work by the Health and Safety Executive (HSE) might be a good model for further work by the Commission: this has entailed, for instance, secondments of staff between the HSE and local authorities, in a way that has resulted in a increased sense of partnership based on stronger understanding, and better alignment of both parties' strategic interests.

## Data requests

### Hampton principle

***“Businesses should not have to give unnecessary information or give the same piece of information twice.”***

## Key findings

- **The scale of the Commission’s data requirements is a significant source of complaint for its stakeholders**
- **The forms required for data returns are, in general, well constructed; but the rationale for some of the requirements is not explained clearly enough.**
- **The reasons for data collection in some cases is not clear; with better information and intelligence on the sector, the need for these returns may be able to be reviewed and reduced.**
- **The need for quarterly data returns for local authorities should be reviewed.**

## Background

- 55** Data, when it is effectively used, can inform a strategic, intelligence-led, approach to regulation. Regulators need to make sure, however, that the collection of data does not impose unnecessary costs on compliant businesses.
- 56** The Commission collects data both to inform its work as a regulator (as a source of intelligence and to contribute to its risk assessment process) but also as part of its duty under the Gambling Act to advise the Secretary of State about certain matters relating to gambling. The Commission imposes three main data requirements on business and its partners. It requires:

- a data for licence applications (including for instance data on the financial position of the prospective licensee);
  - b data in the form of annual or quarterly regulatory returns to be submitted by licensees (including information on matters like staff turnover); and
  - c quarterly data returns from local authorities (regarding enforcement action, such as inspections and reviews of licences).
- 57** In parallel, businesses seeking a premises licence must submit data to the relevant local authority as part of their application to operate under the regime.

## Review Findings

### **The scale of the Commission's data requirements is a significant source of complaint for its stakeholders**

**58** A wide range of stakeholders (from business and elsewhere) questioned the way in which the Commission collects data. In particular, doubts were raised about:

a the quantity of the data required,

b the 'personal', or confidential, character of some of the information, and

c about whether particular items of information were meaningful, or indeed used.

**59** The Review Team's work coincided with the deadline for the first round of data submissions by some operators, and it found that in the circumstances a significant amount of compliance staff time was given over to explaining data return forms, and in chasing the provision of specific data requests, rather than pursuing compliance in wider terms. We found that the data collection regime currently poses a significant obstacle to stakeholders buying in to the regulatory regime: like licensing fees, the need to provide regulatory data has been a new experience for many of the regulated businesses concerned, and this has inevitably complicated the Commission's work here.

### **The forms required for data returns are, in general, well constructed; but the rationale for some of the requirements is not explained clearly enough**

**60** Licensing forms can appear daunting, but are well constructed. They are designed to fit the circumstances of a wide range of sectors, and are therefore relatively long:

with clear guidance, however, they are relatively straightforward to complete. Their design has been improved over time following consultation with the industry.

**61** The Review Team accepts the need for certain personal financial information to be provided as part of the licensing process. This is important in establishing the viability of the enterprise; in particular, whether a prospective licensee has the financial capacity to cover the risks that are inherent in the business.

**62** However, the usefulness of other elements of the data returns were less clearly explained. Commission staff were, on occasion, unable to explain the reason for specific data requests, or did so in a way that could be confusing for businesses. In one case, for instance, we found that front-line staff had effectively placed an additional burden on businesses by asking them to record personal details of individuals whose age had been checked on entry to a licensed premises, despite the fact that no such information is actually required by the Commission. Where data is necessary, a more considered and active approach should be taken to raising staff awareness and explaining the rationale for data collection – generally and specifically – to business.

### **The reasons for data collection in some cases is not clear; with better information and intelligence on the sector, the need for these returns may be able to be reviewed and reduced**

**63** The Commission accepts the need to review its data collection on a rolling basis, and argues that increasingly strong grasp of the risks involved in the sector will allow for a review as to whether aspects of the returns are necessary.

- 64** The Review Team strongly supports its proposals here, and would encourage the Commission to clarify its thinking to those who are on the receiving end of the data requests. This communication should also make the Commission's commitment to proportionality of data requests, and their possible costs, clear.
- 65** The Commission should also explore alternatives to data collection as a source of meaningful intelligence on compliance: surveys or complaints data might for instance become more useful and meaningful in practice than routine data returns.
- 66** In the Impact Assessment accompanying its January 2008 publication on Regulatory Returns, the Commission announced its plans to review data requirements in 2010 (once two sets of annual data returns have been made). We believe that there should be a systematic review of all the data requirements at that point, and that changes should be implemented in good time for the 2010-11 data collection cycle (ie. the fourth year of data collection).
- 67** The Commission also collects data in support of its role as adviser to the

Secretary of State. There are risks that this could work against the Hampton vision that data should only be collected in cases of clear regulatory need and the Commission should work to ensure that that the collection burden is reduced as far as possible.

### **The need for quarterly data returns for local authorities should be reviewed**

- 68** Local authorities are required to submit quarterly returns to the Commission on their activities under the Gambling Act 2005. Returns include information on (for example) number of inspections, number of licence reviews, and number of other enforcement activities. A quarterly return appears to be excessive: local authorities are already required to report individual cases of some of these activities to the Commission as and when they arise, and some of the data is hard to make sense of out of context: for instance an "inspection" can mean activity taken in response to a specific complaint, or could be part of a random programme of visits. As part of its work on partnership with local authorities, the Review Team believes that these requirements should be reviewed.

## Inspections

### Hampton principle

***“No inspection should take place without a reason.”***

## Key findings

- **The Commission’s inspection strategy is not yet mature; its initial focus has been on building relationships with new licensees, and with bringing harder-to-reach operators into compliance.**
- **The Commission intends to implement a fully risk-based approach to inspection, and the Review Team support this.**
- **Some regulated businesses are confused as to the Commission’s inspection policy and its current relation to risk.**

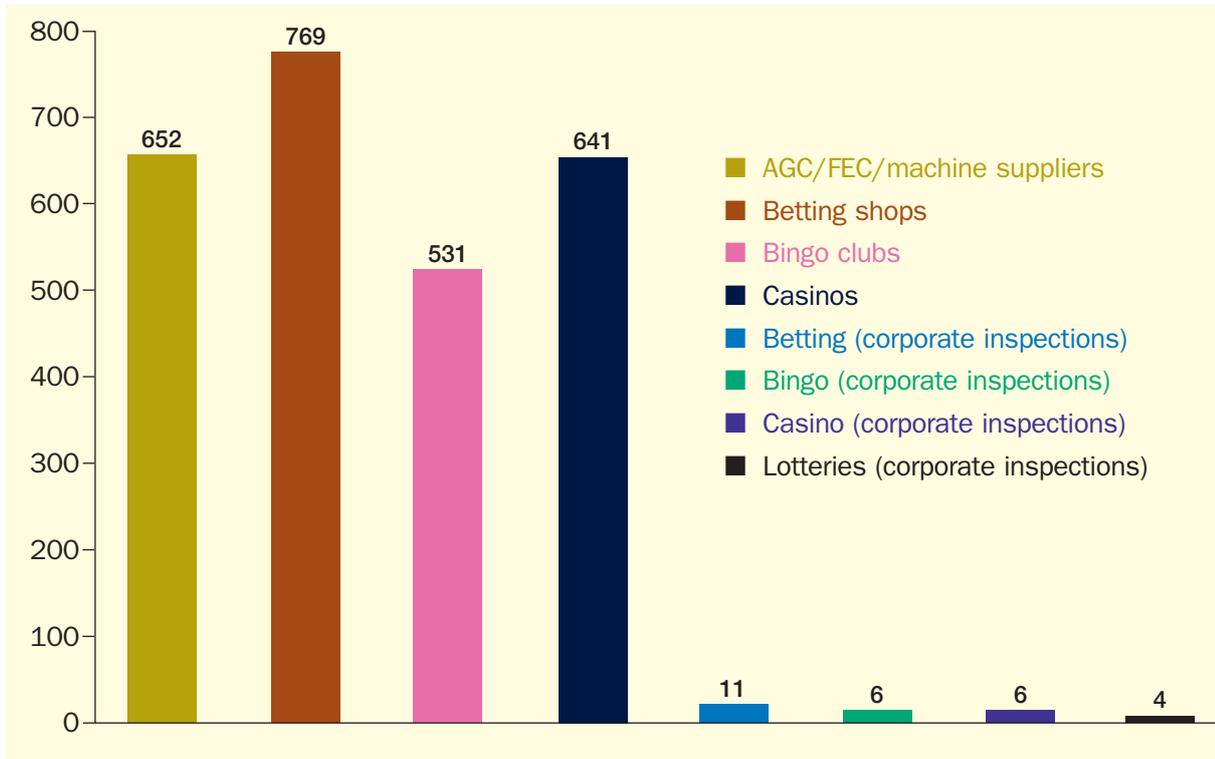
## Background

- 69** The Gambling Act 2005 has fundamentally changed the inspection regime for most sectors. Under the predecessor legislation, casinos were subject to regular monthly inspections; meanwhile remote gaming was illegal and bookmakers and arcades were not subject to inspection under the gambling legislation at all.
- 70** The transition from the Gaming Board to the Commission with new sectors and a new Act has had implications for staffing that have posed challenges in terms of knowledge capture and transfer; the Commission acknowledges the problems this has initially created in some areas in terms of developing expertise. Many of the businesses that the Review Team spoke to were sympathetic to the position of the Commission, and some indeed expressed their interest in helping familiarise new staff with the nature of the businesses involved.

**71** In 2007/08 the Commission undertook:

- Corporate inspection visits - six to major casino operators, six to bingo operators, 11 to major betting companies and four to lottery operators.
- Compliance visits – 641 compliance visits to casinos, 531 to bingo clubs, 769 to betting shops and 652 to adult gaming centres, family entertainment centres and machine suppliers.

**Number of compliance visits by sector**



**Review Findings**

**The Commission’s inspection strategy is not yet mature; its initial focus has been on building relationships with new licensees, and with bringing harder-to-reach operators into compliance**

**72** The Commission’s inspection strategy is not yet mature: priority since 2007 has been given, through the work of the Commission’s compliance managers, to raising awareness of, and thereby compliance with, the new legislation. Businesses will however be looking to the Commission to put its more risk-based inspection plans into operation as soon as possible.

**73** The focus has so far been on those parts of the sector which were new to the

Commission, notably bookmakers and arcades. Many of the stakeholders that we spoke to complimented the “coaching” approach that inspectors had taken in practice, offering tailored explanations of the meaning of the gambling regulations for them. There is a commitment to this approach throughout the Commission; however (as with any regulator, especially a regulator implementing new and unfamiliar legislation) the quality and consistency of advice can differ in practice.

**The Commission intends to implement a fully risk-based approach to inspection, and the Review Team support this**

**74** The Commission’s approach to risk assessment and inspection is set out in its publication, *The Compliance Process*, the

*Risk Modelling System and the Annual Visit Programme* (August 2007).<sup>10</sup> This sets out the Commission's vision, which is entirely consistent with the Hampton principles, that a strong record of compliance should result in "earned autonomy" for the operator – a presumption that, all other things being equal, less external scrutiny is needed than in other cases, meaning a reduced burden of inspection for compliant businesses.

- 75** One year on, this model has yet to take effect; this in part reflects the complexities of assessing risk in practice, particularly in the context of a new licensing regime. The Commission remains committed to this vision however, and we strongly support its plans to bring more detailed plans forward in the near future for consultation.

### **Some regulated businesses are confused as to the Commission's inspection policy and its current relation to risk**

- 76** In the absence of a fully worked up risk management system, the messages to individual businesses as to what they can expect in terms of inspection under the risk system have not been clear in all cases.
- 77** More could be done to clarify what the Commission's developing thinking will mean for individual businesses (in particular, in terms of the levels of inspections that can be expected) when it takes full effect – though inevitably this will change over time in the light of experience.

<sup>10</sup> Available at: <http://www.gamblingcommission.gov.uk/Client/mediadetail.asp?mediaid=217>

## Sanctions

### Hampton & Macrory principles

***“The few businesses that persistently break regulations should be identified quickly, and face proportionate and meaningful sanctions.”***

***“Regulators should be transparent in the way in which they apply and determine administrative penalties.”***

***“Regulators should avoid perverse incentives that might influence the choice of sanctioning response.”***

***“Regulators should follow-up enforcement actions where appropriate.”***

## Key findings

- There is a commitment throughout the organisation to balancing the effective use of sanctions in serious cases with a presumption that persuasion and advice are the most effective means of creating compliance.
- The Commission’s internal controls on the use of enforcement action have been cumbersome, but a more streamlined decision-making process is being introduced.
- The Commission is restricted to prosecution when taking action against those who do not hold licences; and there is a case for reviewing whether sanctioning powers under Part 3 of the Regulatory Enforcement and Sanctions Act might be adopted for these cases.
- Stakeholders want to see the Commission act vigorously where operators deliberately work outside the law.

## Background

**78** The Gambling Act 2005 has conferred on the Commission a flexible range of sanctions. The Commission’s regulatory regime is founded on the use of licences, both operational (for particular organisations) and personal (for staff with certain responsibilities within organisations). Licences can be reviewed with a range of possible outcomes, depending on the severity of the case:

- warnings about specific forms of non-compliance can be issued;

- licences can be suspended;
- new conditions can be attached to the licence; or
- licences can be removed.

**79** Additionally, financial penalties (theoretically unlimited) can be imposed for breaches of licence conditions. Those operating without a licence, or committing a range of other related offences, may be prosecuted.

- 80 There were 1564 complaints against operators between 1 September 2007 and 31 January 2009. Many of these are handled at the point of first contact because they are either in respect of remote operators not licensed by the Commission or because the complainant has not used the operators' complaints procedure. In 81 of cases, the matter was sufficiently important to be referred on to the enforcement team. Actions taken by the Commission were:
- 30 certificates issued under previous legislation and 1 personal licence revoked
  - 47 criminal investigations
  - 31 investigations referred to Regulatory Panel
  - 3 operator's licences suspended; one later reviewed and down scaled to conditions being put on the licence.

## Review Findings

**There is a commitment throughout the organisation to balancing the effective use of sanctions in serious cases with a presumption that persuasion and advice are the most effective means of creating compliance**

- 81 In general, businesses are eager to comply with the law. The Compliance Code for Regulators states that, where a business asks for advice from a regulator, then the regulator should be able to provide that advice and the request (which is evidence of the business's good faith in seeking to comply with the law) should not itself trigger an enforcement action.
- 82 The Review found that this approach was clearly understood and implemented throughout the organisation; with strict controls on the use of enforcement activity.

**The Commission's internal controls on the use of enforcement action have been cumbersome, but a more streamlined decision-making process is being introduced**

- 83 The Commission however deals with a wide range of offences which vary from cases of individual wrong-doing (for instance, dealing with personal licence holders who have cheated in the course of their duties) to more serious cases, like the systematic operation of illegal gambling facilities by organised crime.
- 84 There were unusually strict controls on the application of enforcement actions within the Commission however, in the early stages, with decisions to take enforcement action beyond the level of a warning letter being referred to a Commissioner-level Regulatory Panel. We welcome the fact that a range of decisions have now been delegated to staff with tiered sign-off, reflecting the practice in relation to licence application decisions; this ought to be kept under review, perhaps including some benchmarking with other regulators, and the case for any further delegation considered in the future.

**The Commission is restricted to prosecution when taking action against those who do not hold licences; and there is a case for reviewing whether sanctioning powers under Part 3 of the Regulatory Enforcement and Sanctions Act might be adopted for these cases**

- 85 While the Commission has considerable flexibility in the range of sanctions at its disposal where it is taking action against a licence-holder, it is limited to prosecution in cases where a licence is not held.

**86** In these cases, the Review Team found that some of the sanctions that are provided in the Regulatory Enforcement and Sanctions Act 2008 – notably Fixed and Variable Monetary Penalties and Enforcement Undertakings – could give greater flexibility and effectiveness to the Commission’s enforcement toolkit.

**Stakeholders want to see the Commission act vigorously where operators deliberately work outside the law**

**87** A number of stakeholders expressed a view that the Commission was allocating insufficient resources to enforcement where individuals are deliberately flouting the law; for instance, where they are providing gambling facilities without a licence.

**88** While we were persuaded that the Commission has a strong grasp of the most serious regulatory risks confronting it in practice (including those which come

from outside the licensed sector, notably with the provision on unlicensed gambling machines), and that enforcement activity was being prioritised accordingly, more could be done to tie the allocation of enforcement resources more systematically to the Commission’s emerging risk model. For instance, some of the greatest regulatory risks facing the industry come from those who are outside the licensing system; there is as yet no clear way of showing how action directed at those deliberately operating outside the law is prioritised in relation to routine activity with the compliant majority of licensed businesses.

**89** On a related point, the Review Team thought that Commission had not publicised the extent of its enforcement activity as fully as it might. We believe such publicity will be important in giving reassurance to compliant stakeholders about the way that it is prioritising its work.

## Focus on Outcomes

### Hampton principle

***“Regulators should measure outcomes and not just outputs.”***

## Key findings

- **An understanding of the licensing objectives underpinning the regulatory regime for gambling is thoroughly embedded in the organisation and the industry.**
- **The Commission has yet to convert the licensing objectives into measurable outcomes, and develop metrics to assess progress against these.**
- **There are particular sensitivities around outcomes associated with “problem gambling”; but the Commission should work to tackle these openly.**

## Background

### The Licensing Objectives:

- “(a) preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime;
- (b) ensuring that gambling is conducted in a fair and open way; and
- (c) protecting children and other vulnerable persons from being harmed or exploited by gambling.”

*Section 1, Gambling Act 2005*

- 91** The Review Team was impressed with the extent to which these objectives are recognised throughout the Commission, and by external stakeholders, including relatively junior staff working for licensees.
- 92** This level of recognition of the intentions behind regulation is impressive (particularly in the light of the relatively short period of time in which the Commission has been operating) and reflects the Commission’s success in communicating and promoting an understanding of the regulatory regime over its first year of operation.

### **The Commission has yet to convert the licensing objectives into measurable outcomes, and develop metrics to assess progress against these**

## Review Findings

### **An understanding of the licensing objectives underpinning the regulatory regime for gambling is thoroughly embedded in the organisation and the industry**

- 90** The Gambling Act 2005 gives the Commission a statutory responsibility to (a) pursue and have regard to the licensing objectives, and (b) to permit gambling, in so far as the Commission thinks it is consistent with those principles.

- 93** The objectives do not in themselves however fully convey the outcomes that the work of the Commission and its partners is intended to secure: for instance, one measurable outcome of the second licensing objective would be the extent to which customers are confident of their ability to place a fair bet. We found that Commission staff – while they clearly understood the objectives – took an

inconsistent view of the outcomes that they are trying to achieve. Reporting on the achievements of the Commission in its first year of operation (for instance, in the Commission's Annual Report) has focused on output measures, like the number of compliance visits, and (reflecting the most important task before the Commission at that point) the number of licences granted.

- 94** Regulators commonly find it difficult to identify quantifiable measures that directly reflect their particular impact on a meaningful social outcome. This reflects the complexity of causation. For instance, the prevalence at any particular time of "problem gambling" may reflect a number of factors that lie wholly outside the Commission's control.
- 95** Outcome measures need not be used as indicators of the Commission's performance, but they would be helpful in clarifying wider trends affecting its work and in bringing issues where there is a need for the Commission to take action to its attention. More could be done to articulate the outcomes that the Commission (with its many partners) is seeking to achieve, and to explore possible proxy measures and indicative data which might be used in the absence of a completely satisfactory measure.
- 96** A good example in this instance would be the Financial Services Authority's Outcomes Performance Report (OPR), which has been developed to provide a single repository of performance information about how well the FSA is meeting its statutory objectives. The OPR report has value not only in tracking performance, it also can be used as a management tool which can be used to disseminate priorities and messages to staff.

### **There are particular sensitivities around outcomes associated with "problem gambling"; but the Commission should work to tackle these openly**

- 97** The Review Team discussed the outcomes associated with "problem gambling" with staff of the Commission and external stakeholders. The scale of problem gambling is hard to determine, given the hidden character of the condition. The most important recent study<sup>11</sup> found that the rate of problem gambling in the adult population in 2007 was about 0.6% (about 284,000 adults). This is the same percentage of the population as identified in an earlier survey published in 1999. Other sources of information on its scale and causes – for instance, levels of self-exclusion, and research on the impact of gambling machines in other jurisdictions where gambling has been liberalised (notably in Australia) – are available and have been used by the Commission; it is important that all available sources should be used to create a more informed framework for regulatory decision-making.
- 98** One of the difficulties facing the Commission is the presentational difficulty associated with being seen to advocate an acceptable level of problem gambling if a target were set; however we believe that there are comparable issues in other regulatory sectors where acceptable levels of risk are at issue. An attempt to determine what the appropriate outcome should be – which would need to address the appropriate balance between regulation and individual responsibility – is a prerequisite of a mature debate on regulation in the sector. A measure relating to a trend in problem gambling (which might include a target for year on year reduction in problem gambling relative to the volume of gambling activity in general), might be one way of addressing the issue.

<sup>11</sup> 2007 British Gambling Prevalence Study [www.gamblingcommission.gov.uk/UploadDocs/publications/Document/Prevalence%20Survey%20final.pdf](http://www.gamblingcommission.gov.uk/UploadDocs/publications/Document/Prevalence%20Survey%20final.pdf)

## Appendix 1: Review Team membership

**Andy Drane** is the Deputy Chief Executive and Director of Operations of the Security Industry Authority and has been with the organisation since its creation in 2003. Prior to joining the SIA, Andy enjoyed a 30-year police career in the Essex and Avon & Somerset police services, achieving the rank of Assistant Chief Constable.

**Hugh McNeal** has worked in academia, HM Treasury and the Better Regulation Executive. He is currently Director of the Low Carbon Business Opportunities Unit in BERR.

**Ian Peters** was until recently Director of External Affairs and Marketing at EEF, the UK manufacturing employers' organisation. He is currently providing consultancy to BERR on aspects of its manufacturing strategy. Ian was a member of the Government's Better Regulation Task Force from 2000-2007 and has previously worked on business policy for the British Chambers of Commerce (BCC) and the CBI where he was head of the Small and Medium Enterprise Unit.

**Chris Shapcott** is a Director in the National Audit Office, where he is responsible for leading examinations of the economy, efficiency and effectiveness with which government bodies have used their resources. He currently leads the NAO team responsible for examinations of consumer affairs, regulation and regulatory reform. In recent years he has been responsible for National Audit Office examinations of economy, efficiency and effectiveness in several different areas, including the National Health Service, PFI, environment, transport and agriculture.

## Appendix 2: Key findings and conclusions of the Hampton and Macrory reports

### Hampton principles of inspection and enforcement

- Regulators, and the regulatory system as a whole, should use comprehensive risk assessment to concentrate resources on the areas that need them most
- No inspection should take place without a reason
- Regulators should provide authoritative, accessible advice easily and cheaply
- All regulations should be written so that they are easily understood, easily implemented, and easily enforced, and all interested parties should be consulted when they are being drafted
- Businesses should not have to give unnecessary information, nor give the same piece of information twice
- The few businesses that persistently break regulations should be identified quickly, and face proportionate and meaningful sanctions
- Regulators should recognise that a key element of their activity will be to allow, or even encourage, economic progress and only to intervene when there is a clear case for protection
- Regulators should be accountable for the efficiency and effectiveness of their activities, while remaining independent in the decisions they take
- Regulators should be of the right size and scope, and no new regulator should be created where an existing one can do the work
- When new policies are being developed, explicit consideration should be given to how they can be enforced using existing systems and data to minimise the administrative burden imposed

Source: Hampton Report, Box E2 page 7

## Macrory's principles and characteristics of an appropriate sanctioning regime

A sanction should:

1. Aim to change the behaviour of the offender;
2. Aim to eliminate any financial gain or benefit from non-compliance;
3. Be responsive and consider what is appropriate for the particular offender and regulatory issue, which can include punishment and the public stigma that should be associated with a criminal conviction;
4. Be proportionate to the nature of the offence and the harm caused;
5. Aim to restore the harm caused by regulatory non-compliance, where appropriate; and
6. Aim to deter future non-compliance.

Regulators should:

1. Publish an enforcement policy;
2. Measure outcomes not just outputs;
3. Justify their choice of enforcement actions year on year to stakeholders, Ministers and Parliament;
4. Follow up enforcement actions where appropriate;
5. Enforce in a transparent manner;
6. Be transparent in the way in which they apply and determine administrative penalties; and
7. Avoid perverse incentives that might influence the choice of sanctioning response.

Source: Macrory Report, Box E1 page 10

## Appendix 3: Review scope and methodology

The review focused on those aspects of the Commission's activities where we considered that its actions have the most impact on business. This meant that the majority of the Commission's work was in scope

Our methods included:

- interviews with a wide range of Commission staff including senior managers;
- interviews with other stakeholders including the trade bodies in the gambling sector and business representative groups;
- focus groups of Commission policy staff and enquiry staff
- observational visits including inspections; and
- document review, including the Commission's high level strategies and plans.

The review process is described in *Hampton Implementation Reviews: Guidance for Review Teams*. It is not the same as a full value-for-money audit of economy, efficiency and effectiveness and the Review Team's conclusions are both evidence- and judgement-based. These judgements, however, have been made drawing on a range of evidence from different sources, including those described above. Judgements have not been based on evidence from a single source – the Review Team has sought to bring together evidence from a number of different businesses or organisations, and from Commission front-line staff, policy officials and senior managers.







Better Regulation Executive  
Department for Business, Enterprise and Regulatory Reform  
3rd Floor  
1 Victoria Street  
London SW1H 0ET

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