



**National Lottery
Commission**

The Principles of Regulating with Excellence

January 2009

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1. Executive Summary

- 1.1 The National Lottery Commission aspires to excellence in regulation. This *Principles of Regulating with Excellence* paper sets out how we intend to improve our regulatory model to ensure that the National Lottery is able to continue to innovate and reinvigorate itself to meet the challenges of the future, whilst continuing to protect players.
- 1.2 We set out here the key features of the Lottery regime, the principles of better regulation within the context of the Lottery environment and how we will apply those principles to our activities in a way that enables us to regulate with excellence.

The National Lottery Regime

- 1.3 The National Lottery Commission is the regulator of the National Lottery. But the duties which Parliament has laid down for the Commission provide us with responsibilities which go beyond a narrow regulatory role. We must ensure the Lottery is run with all due propriety, protect players, and, subject to those two being satisfied, do all we can to ensure that returns to good causes are maximised. Everything we do is driven by these obligations.
- 1.4 Our duties to protect players and ensure propriety typically give rise to activities which are regulatory in nature. However, our third duty – to ensure that returns to good causes are as great as possible – is somewhat different. It requires us to act on behalf of our key stakeholders; both the national interest and, more directly, the interest of the good causes. This type of ‘investor’ role gives us responsibilities which are somewhat different from general regulatory activities. We have aligned incentives, whereby the operator’s returns are closely tied to the returns it generates for good causes. Nevertheless, to ensure that returns to good causes continue to be maximised, we must give ourselves scope to challenge any underperformance by the operator.
- 1.5 Taken together, our duties put us in a position unlike that faced by most regulators. Few other regulators are required in law to have a direct interest in the commercial success of the undertaking which they regulate in the same way that the Commission is. We therefore need to ensure, both through the process to award the operator’s licence and in subsequent monitoring, that the operator remains commercially successful, in order that returns to good causes are maintained. As a result, we should be seen as part regulator and part ‘investor’, acting on behalf of good causes in a similar manner to the client side in an outsourced activity.

Better regulation and the National Lottery

- 1.6 Although opinions may differ on the appropriate level of intervention, regulation should always be necessary, fair, effective, affordable and enjoy a broad degree of public confidence. To achieve this, the Government has endorsed five principles of good regulation which set the context for the dialogue between the regulator and the regulated.

1.7 Therefore, the challenge for us is to consider how best to apply better regulation principles to our regulatory and ‘investor’ activities. This should not be taken to mean that we do not accept the need for better regulation principles to apply to our activities or our oversight of the operation of the Lottery. We are committed to the five principles of good regulation and to better regulation more generally, and will continue to develop our approach in line with them.

Regulating with Excellence

1.8 Given our aspiration to excellence in regulation, we have for some time been considering how our approach to regulation might evolve and be applied in a way that maximises the National Lottery’s potential. We have sought to develop and evolve our approach to regulation based on the objectives and outcomes of our decisions, whilst being sensitive to the needs of bidders during the recent competition for the third licence. Now the competition is over, we intend to develop our approach through the *Regulating with Excellence* programme which will apply to the whole range of our activities.

1.9 Accordingly, the aim of the *Regulating with Excellence* programme is to implement where possible outcome-based regulation, informed by risk assessment, enhancing flexibility of licence compliance while maintaining necessary protections. Specific outcomes and benefits that we seek are as follows:

- **A clear statement of what Regulating with Excellence means for the National Lottery:** so that stakeholders understand our approach. That is the purpose of this document;
- **Outcome-based regulation, informed by risk assessment:** to give Camelot Group plc, as the operator, the ability to design the processes which are most appropriate to its business model and which best provide us with the outcomes that we expect the operator to deliver;
- **Earned autonomy/proportionality:** to recognise and take account of risk, Camelot’s incentives and past performance in undertaking our regulatory work;
- **Informed analysis of operator performance:** in order that we can satisfy ourselves that Camelot is doing its best to maximise returns to good causes, and that it remains in a healthy financial state;
- **Transparency:** to ensure that we are accountable to the public and others, and that decisions and related processes are clearly recorded and understood;
- **Public engagement:** to ensure that we consider the opportunities for public engagement, including opportunities for consultation and other public dialogue; and

- **Enforcement:** to implement changes to our approach to enforcement to reflect better regulation principles.

1.10 The principles of *Regulating with Excellence* set out in this document will support our aim that we operate in a way that secures the optimum performance from the operator and delivers the best possible outcomes for players and good causes. Ultimately, the purpose of *Regulating with Excellence* is to make certain that we play our part in delivering the best possible National Lottery for the nation.

2. Introduction

- 2.1 Regulation is important to protect citizens, consumers, workers and businesses from harm. But it is equally important that regulation is focussed where it is most needed and does not impose unnecessary costs on the economy and wider society.
- 2.2 The National Lottery Commission aspires to excellence in regulation and has for some time been investigating ways in which its regulatory model could be improved.
- 2.3 In recent years, the Government has developed a number of initiatives - otherwise known as the Better Regulation agenda - in order to ensure that the principles of good regulation are adopted across the spectrum of the public sector in a proactive way, as the Commission has already been doing.
- 2.4 Better regulation has come a long way, from an initial set of defining principles to the initiation of specific bodies to drive the agenda across government. The Government wishes to go further still, with the aim of improving the way that regulation is prioritised and the way it manages the overall cost of regulation across the country.
- 2.5 The variety of activity that is regulated is immense, with different industries and environments having their own particular characteristics. The National Lottery is no different. The purpose of this paper is to set out the key features of the Commission's regime, to consider the principles of better regulation within the context of the Lottery environment and to explain how the National Lottery Commission will apply those principles to its activities in a way that enables it to regulate with excellence.

3. Features of the National Lottery regime that affect the Commission's approach to regulation

Background

3.1 The National Lottery Commission is the regulator of the National Lottery but the statutory duties which Parliament has laid down for the Commission provide it with responsibilities which go beyond a narrow regulatory role. Whilst many of its functions are regulatory in nature, this does not reflect the full range of the Commission's duties and functions.

3.2 The introduction of the National Lottery in 1993¹ established three important principles. First, the existing position that lotteries are unlawful unless specifically authorised by legislation was maintained. Second, it established that the National Lottery would be a means of raising funds for public benefit, (through the 'good causes'). Third, it established that the National Lottery should be a monopoly, commercially operated but primarily for the public good.

3.3 A separate public body was created to oversee these arrangements. Originally this was the Director General of the National Lottery. In 1999, the Director General was replaced by the National Lottery Commission. The Commission is responsible for:

- Selecting and licensing the commercial operator². The term of such licences is limited and so periodic retendering exercises must be organised by the Commission. The Commission may include such conditions in the licences it grants as it sees fit, and certain conditions must be included;
- Licensing each game that forms part of the National Lottery³. Again, The Commission may include such conditions in the licences it grants as it sees fit, and certain conditions must be included; and
- Ensuring that the operator complies with the terms of its licences and, if it does not, the Commission may take steps to ensure that it does.

3.4 The Commission has three important statutory duties. It must ensure the Lottery is run with due propriety, it must protect players, and, subject to those two being satisfied, do all it can to ensure that the returns to good causes are maximised. Everything the Commission does is driven by these obligations. If there is a conflict between propriety and player protection on the one hand, and returns to good causes on the other, the former will always take precedence. For example, the Commission's statutory obligation to protect the players of the National Lottery requires that it must not license any game which, in its opinion, is likely to encourage excessive or underage play. It must therefore be satisfied that any game the operator proposes contains sufficient harm prevention measures before it will allow the game to go on sale. As a result, since the introduction of the National Lottery, its games have been among the safest forms of gambling in the UK while also being the most ambient. The Commission is committed to ensuring that this remains the case.

¹ Following the passage of The National Lottery etc. Act 1993 (as amended). A summary of the Lottery framework is set out in Annex A of "Creating A Lottery for the future: An Overview of the Third Licence Competition" (April 2008) available at www.natlotcomm.gov.uk

² Operators' licences are known as 'section 5 licences' as they are granted under section 5 of the National Lottery etc Act 1993 (as amended).

³ Game licences are known as 'section 6 licences' as they are granted under section 6 of the National Lottery etc Act 1993 (as amended).

Regulatory Activities

3.5 The Commission's duties regarding propriety and player protection typically give rise to activities which are regulatory in nature. In meeting these duties, the Commission is constraining the freedoms of the commercial operator in order to ensure that socially acceptable outcomes are met. These include, for example, the minimisation of the harm to players and their families that are likely to arise from excessive play and ensuring that games do not appeal to underage players. Whilst these activities must reflect the fact that the National Lottery has a special position in society, as a monopoly run primarily for the national benefit, they remain at heart regulatory activities and so their exercise will benefit from application of best regulatory practice.

'Investor' Activities

3.6 The Commission's third duty – to ensure that returns to good causes are as great as possible – is somewhat different. It requires the Commission to act on behalf of its key stakeholders; both the national interest and, more directly, the interest of the good causes. In broad terms, there are three strands to this 'investor' role:

- To ensure that licences are granted on terms which, subject to propriety and player protection considerations, achieve the greatest benefit possible to the good causes;
- To satisfy itself that the operator, during the term of its licence, is performing as well as possible from the perspective of returns to good causes; and
- To secure the longer term interests of the good causes. In particular, to see that appropriate safeguards are in place to maintain returns beyond the current licence period.

3.7 These responsibilities are somewhat different from general regulatory activities. In essence, the Commission recognises that the commercial operator it licenses will require a high degree of commercial freedom to bring its expertise to bear and respond quickly and innovatively to changes in market conditions. The Commission can see little benefit in seeking to double-guess the operator, or in substituting its own commercial judgements for those of the operator. This has been made possible by the alignment of incentives, whereby the operator's returns are closely tied to the returns it generates for good causes⁴.

3.8 However, to ensure that returns to good causes continue to be maximised, the Commission must give itself scope to challenge any under-performance by the operator, and to secure the longer term interests of the good causes (particularly towards the end of a licence period when its interests are most likely to diverge from those of the operator). This recognises both the position of the Lottery operator as a monopoly supplier and therefore the absence of direct market competition to drive the operator's performance, and the potential for divergence between the operator's specific duty to its shareholders and the Commission's overriding duty to maximise returns to good causes. This divergence is most evident in arrangements to support future competition, where the operator will wish to secure its future whilst the Commission will want as strong a

⁴ Full details of how the Commission has aligned incentives can be found in a report by NERA Economic Consulting entitled *The Licensee's Retention for the Third National Lottery* available at: <http://www.natlotcomm.gov.uk/UploadDocs/Contents/Documents/The%20Licensee's%20Retention%20for%20the%20Third%20Lottery%20v.%20Final.pdf>

competition as possible.

3.9 Although other regulators will have regard to how proportionate its regulation is overall, few other regulators are required in law to have a direct interest in the commercial success of the undertaking which they regulate in the same way that the Commission is. Should the Lottery operator fail, there is a significant risk that returns to good causes will be lost as a consequence. The Commission therefore needs to ensure, both through the process to award the operator's licence and in subsequent monitoring, that the operator remains commercially successful, in order that returns to good causes are maximised.

Competition for the Operator's Licence

3.10 The Commission ensures that licences are granted on terms which achieve the greatest benefit possible to the good causes. It delivers this by holding periodic competitions for the operator's licence. The Government and Commission believe that vigorous competition for the right to operate the National Lottery is the best way to generate the maximum returns for good causes. In addition, it is important that the key commitments made by the successful bidder can be enforced by the Commission. Hence, these are incorporated into the operator's licence.

3.11 As a result, and unlike most other regulatory regimes, the Commission's relationship with the operator has major elements which are much closer to a traditional contractual relationship, than an oversight of compliance within a statutory regime. Most regulated bodies do not request to be subject to regulation but simply find themselves operating within a regulated environment. The operator of the National Lottery, however, is selected following a competition that it freely enters into, with the resultant regulatory regime reflecting the terms of that competition. The licence itself therefore needs to be a substantial document as it incorporates both regulatory elements (e.g. to ensure the fair operation of draw machines) and commercial ones more akin to contractual terms (e.g. to safeguard in the long term the Commission's interest in Lottery intellectual property).

3.12 Also, the statutory regime is based around a specialist body to oversee a single operator which has been selected for its expertise in lottery operations. This is a fundamentally different relationship to the majority of regulators which are overseeing matters which apply to a large number of businesses:

- In which the regulator does not have a direct interest in the commercial performance of those businesses so long as they are properly conducted; and
- Whose primary commercial focus and expertise is not based around the statutory regimes (such as health and safety regulation) which apply to them.

Conclusion

3.13 The Commission's duties do not simply fall straightforwardly within the scope of regulation. This is due to both the Commission's interest in the commercial performance of the operator and the fact that the operator accepts obligations voluntarily by bidding for the licence through an open, competitive process. As a result, the Commission should be seen as part regulator and part 'investor', acting on behalf of good causes in a similar manner to the 'client-side' in an outsourced activity.

3.14 Whilst it is important to be clear about the dual-nature of the Commission's role when considering how best to apply better regulation principles to its activities, this should not be taken to mean that the Commission does not accept the need for those principles to

apply to its activities or to its oversight of the operation of the National Lottery. Rather, the Commission intends to develop its approach through its *Regulating with Excellence* programme which will apply to the whole range of its activities.

3.15 The Commission is committed to the five principles of good regulation and to the principles of better regulation more generally, and will continue to develop its approach in line with those principles. It is also committed to learn from best practice and the experience of other sectors. The Commission already works closely with the Gambling Commission to highlight and exploit areas of common interest such as research, and proactively keeps abreast of developments within its own and other sectors. It is important that it does this in a manner that reflects the dual-nature of its role.

4. The Principles of Better Regulation

- 4.1 Although in many regulatory arenas opinion may differ on the appropriate level of intervention, regulation should always be necessary, fair, effective, affordable, and enjoy a broad degree of public confidence. In order for this to be achieved, the Government has endorsed five overarching principles which were first published by the then Better Regulation Task Force in 1998. The principles are a useful toolkit for measuring and improving the quality of regulation and its enforcement, setting the context for dialogue between the regulator and the regulated. These are set out in Fig 1 – overleaf.
- 4.2 The Commission recognises the importance of these five principles and has taken them into account when reviewing its practices. Our *Regulating with Excellence* programme of work is in essence the way in which the Commission intends to take forward these principles in a way that is tailored to our responsibilities in respect of National Lottery regulation.
- 4.3 Some of the key developments within better regulation are summarised, for ease of reference, at Annex A.

Fig 1: The Five Principles of Good Regulation

Principle	What does it mean?	Example	How does this example translate to the Lottery?
Proportionality	Regulators should only intervene when necessary and remedies should be appropriate to the level of risk posed with costs identified and minimised.	Enforcement should consider an educational, rather than punitive approach where possible.	The Commission will have a clear rationale for assessing the risk of a licence condition breach and/or its statutory obligations being compromised. The Commission would consider non punitive sanctions such as informal discussions.
Accountability	Regulators must be able to justify decisions and be subject to public scrutiny.	There should be well-publicised, accessible, fair and effective complaints and appeals procedures.	The Commission will make public its reasons for responding in a particular way if the operator breaches a licence condition.
Consistency	Rules and standards must be joined up and implemented fairly.	New regulation should take account of other existing or proposed regulation, whether of domestic, EU or international origin.	The Commission will put in place processes to proactively monitor developments in the lottery and gaming environment and consider these when proposing changes to its operations.
Transparency	Regulators should be open, and keep regulations simple and user-friendly.	The consequences of non-compliance should be made clear.	The Commission will publish its enforcement policy and will ensure that the Lottery operator is fully consulted during its formulation.
Targeting	Regulation should be focused on the problem, and minimise side effects.	Where appropriate, regulators should adopt a 'goals-based' approach, with enforcers and those being regulated given flexibility in deciding how to meet clear, unambiguous targets.	The Commission will define the outcomes that it expects the operator to achieve and use a risk assessment methodology to focus its efforts on the areas most important to it.

5. Progress to Date

Review of the Commission's approach to regulation

5.1 The Commission aspires to excellence in regulation. It has been considering for some time how its approach to regulation might evolve and be applied in a way that maximises the National Lottery's potential. It has sought to develop and evolve its approach to regulation based on the objectives and outcomes of its decisions. It differentiates between its 'social regulation' responsibilities around player protection and its 'commercial regulation' responsibility to maximise returns to good causes.

5.2 In some commercial areas, the Commission has already moved away from the detailed control of inputs which require consent or approval in advance. For example, the Commission no longer licenses individual Scratchcards or Instant Win Games and now grants class licences. This recognises the experience of the operator and allows it to launch certain types of game, within prescribed guidelines, without the specific permission of the Commission.

5.3 With this approach in mind, the Commission launched a consultation in April 2006 which sought views on proposals to review its regulatory model⁵. The consultation proposed areas in which the Commission regulates in which it might be appropriate to implement the principles of better regulation. The proposals centred around:

- An evidence-based framework for assessing risk, applied to a range of its regulatory activity;
- Identifying opportunities where the Commission could move to a system of regulatory outputs, so relaxing its regulation of certain input activity;
- Adopting a policy for publishing its regulatory decisions;
- Reviewing its approach to monitoring the Lottery operator's performance and compliance;
- Reviewing its application of sanctions for non-compliance; and
- Investigating the potential use of Impact Assessments.

5.4 The respondents all broadly welcomed the consultation as a valuable initiative and welcomed the opportunity to work together on it with the Commission in future.

5.5 Soon after this consultation was launched, however, the Commission issued its Invitation to Apply for the third licence to run the National Lottery. The resultant competition process and, more recently, the transition period between the awarding of the licence in August 2007 and its coming into force in February 2009 then became the Commission's top priority.

5.6 During the competition period, the Commission decided that this regulatory work should be put on hold. This decision was taken to avoid the potential for any adverse impact on

⁵A Review of the National Lottery Commission's Approach to Regulation, April 2006
<http://www.natlotcomm.gov.uk/CLIENT/content.ASP?Contentid=65>

the competition process arising from changes to the regulatory model. Accordingly, the Commission did not publish further proposals during the period of the competition. It was vital during the competition that the Commission could give potential bidders some element of certainty about its regulatory approach.

5.7 Notwithstanding that decision, the Commission took the opportunity of the competition to take a fundamental look at the provisions required from the third licence and to ensure that lessons learned during previous licence periods were incorporated within the licence. Drafting the licence was a particular challenge, as the winner of the competition could have been either the incumbent or a completely new operator. The regulatory position of the Commission would therefore have been different in these two circumstances.

5.8 The third licence was subsequently awarded to the current incumbent, Camelot Group plc. Although ensuring a successful transition to the start of the licence is still of ultimate importance, the Commission nevertheless intends to advance its regulatory review work considerably in 2009.

Drafting of the third licence

5.9 In June 2004, the Commission began the design of the third licence competition for the National Lottery. The aim was for an open and vigorous competition that would result in a licence awarded to the operator who the Commission concluded was best able to maximise returns to good causes.

5.10 The current incumbent, Camelot had 14 years experience of being regulated by the Commission and running the Lottery – it therefore knew what was expected. Likewise, the Commission had 14 years experience of regulating Camelot. The challenge for the Commission therefore was to draft a licence that could be implemented in a way that would recognise the differing experience of all bidders. On one hand, the Commission had to consider licence terms that would control the risks of a less experienced and proven operator while, on the other hand, focussing on those elements of the licence that could potentially be relaxed or changed to a more outcome focused approach, based on the lower risk that proven expertise brings.

In addition, the Commission used this as an opportunity to draft the licence in a way that would also allow future competitions to be conducted on as vigorous a basis as possible. It also sought to embed the principles set out in the review of its approach to regulation and to reflect the evolving regulatory environment.

5.11 Conditions in the third licence have been amended where deemed appropriate to improve the Commission's ability to regulate the operator effectively and to adjust the regulatory regime more towards outcome based regulation. Therefore, in certain areas the Commission has relinquished direct control and instead required the operator to provide reports if it deems necessary and appropriate. For example, there are general conditions in the third licence providing that Camelot must do certain things, such as ensure that its running of the National Lottery is fit for purpose or that it ensure that its technology operation is consistent with certain standards or best practice. The specific delivery of this is left up to Camelot. However, specific clauses in the third licence provide that Camelot must provide the Commission with information as may be specified which provide evidence that this has happened.

5.12 The intention is to allow the operator a greater degree of commercial freedom, in the context of balancing the Commission's social and commercial regulation responsibilities.

5.13 In the interest of future competitions, the Commission has adopted arrangements to reflect the fact that it has an interest in the continued sustainability of the Lottery over a longer period than a single licence term. For example, the Commission has included within the licence requirements that any material assets owned by the third licence operator are made available for transfer at the option of the incoming licensee at nil cost and that staff terms and conditions be controlled in the run-up to the end of the third licence. Such arrangements should help to mitigate the risks inherent in transition and are likely to provide the opportunity for a wider range of bidders to be involved. These arrangements would also assist in managing the situation where an operator either withdraws or has its licence revoked.

Internal Review

5.14 In addition to the 2006 consultation, and in order to develop its thinking, the Commission undertook, with the assistance of management consultants, a review of its licensing, compliance and enforcement activities. The review identified that there were existing examples of outcome-based regulatory activity, but also regulatory requirements which captured inputs and processes rather than outcomes. Whilst the Commission will need a mix of input and outcome-based regulation in order to protect players and maintain propriety, the issue is that of finding the right balance and continuing to review that balance over time as circumstances change. The review highlighted that the scope exists for greater outcome-based regulation. It also identified that there were opportunities to better align regulatory requirements with the risks posed by non-compliance with those requirements.

6. Conclusion

- 6.1 It is clear that the better regulation agenda is a positive driver for change, but it is also true that application of the basket of principles to the National Lottery regime may not be straightforward for the reasons set out earlier in this report. In addition to the application of better regulation being good practice, there are a number of other aims that the Commission has in mind when reviewing its regulatory approach.
- 6.2 The Commission exists to protect the nation's interest in the National Lottery. The benefits of its regulatory and investor functions extend beyond the delivery of propriety and player protection. The nation as a whole has benefitted in countless ways in the last 14 years from the money that the effective operation of the Lottery has bought to good causes and the Commission wishes this to continue. The ultimate purpose of *Regulating with Excellence* is to improve further on the arrangements which have delivered a highly successful National Lottery, ensuring that it remains the safest form of gambling, continues to excite and attract players, and is respected for the positive difference that it makes to the whole of the UK. The Commission intends that its activities should not involve unnecessary burdens on the operator but should take account of past performance, whilst focussing on areas of risk.
- 6.3 In an ever changing and competitive gambling environment, it is imperative that the National Lottery retains the interest and respect of players and that the Lottery continues to be a success. The Commission will use its *Regulating with Excellence* programme to be more flexible, enabling the operator to respond quickly to market triggers and to introduce new and exciting games. Camelot has accumulated a significant amount of experience and commercial skills in running the National Lottery. The Commission wishes to recognise these skills through its approach and to take advantage of the opportunities that it presents to develop and strengthen the long term viability of the Lottery. The way that the third licence is drafted gives the Commission a number of flexible options and as time goes by it can decide how best that licence might be applied.
- 6.4 As discussed, the Commission must protect the long term sustainability of the Lottery if good causes are to benefit going forward. The third licence period will last for 10 years – until January 2019. It is extremely difficult to predict what the Lottery environment will look like in the long term, so the third licence has been drafted to give the Commission and Camelot a range of options to respond effectively to changing market conditions and unforeseen challenges.
- 6.5 The Commission aims to be open and transparent about what it does. This will help the operator to better understand the Commission's thinking which will in turn help to inform the operator's internal decision making and requests to the Commission. Greater transparency will also make the Commission more accountable and visible. The Commission recognises that it is accountable to a wide range of stakeholders in addition to Camelot. These include Parliament, the Department for Culture, Media and Sport, the good causes and most importantly the public, both players and non-players.
- 6.6 The Commission as an organisation aspires to excellence. This has always been the case and has been evidenced through its world class competition process for third licence. By improving and evolving its regulatory approach, (and its approach more generally), it wishes to cement its position as a respected voice in the lottery and gambling environment. Applying a respected regulatory regime will allow the Commission to share best practice with other regulators.

What does Regulating with Excellence mean for the Lottery?

6.7 The aim of the *Regulating with Excellence* programme is to implement where possible Outcome-based regulation, informed by risk assessment, enhancing flexibility of licence compliance while maintaining necessary protections. It seeks to explore avenues to simplify and rationalise enforcement, allowing greater targeting of action on higher-risk areas. Specific outcomes and benefits that we seek are as follows:

- A clear statement of what *Regulating with Excellence* means for the National Lottery – so that the Commission’s stakeholders understand its approach, how it has tailored better regulation principles to its circumstances, and so that it has a clear vision going forward. This is the purpose of this document;
- Outcome-based regulation, informed by risk assessment – compliant with modern regulatory practice. This gives Camelot the ability to design the processes which are most appropriate to its business model and which best provide the Commission with the outcomes that it expects the operator to deliver. Risk assessment allows the Commission to focus its oversight on the areas that matter and where the quality of outcomes is most important to it, so avoiding wasted effort (by both the Commission and Camelot) on things that do not matter or are highly likely to be delivered. Such an approach may still result in certain regulatory requirements containing input measures being retained;
- Earned autonomy / proportionality – to recognise and take account of risk and Camelot’s incentives and past performance (organisational capability and processes) in undertaking Commission regulatory work thus avoiding wasted effort;
- Tools to assess and address operator performance – in order that the Commission can satisfy itself and stakeholders that Camelot is in a healthy state (i.e. unlikely to fail) and doing its best to maximise returns to good causes. This will include active monitoring and informed analysis by the Commission of returns to good causes (i.e. not only monitoring performance but also considering where, when and what action should be taken);
- Transparency. This means increased transparency in ‘policy making’ and decision making processes in order that the Commission is well informed of the views of its stakeholders and is more fully accountable for its actions. Decisions and decision making processes should be clearly recorded and understood. Camelot will have a clear understanding of what the decisions are and how they have been reached, as will other stakeholders;
- Public engagement – to ensure that the Commission considers the opportunities for public engagement, including taking into account the opportunities for consultation and other public dialogue arising from other *Regulating with Excellence* workstreams and from other Commission policy development work, including a fair, accessible and effective complaints procedure; and
- Enforcement - to implement changes to the Commission’s approach to enforcement to reflect better regulation principles and emerging best practice and to publish an enforcement policy.

These outcomes can be seen in the context of better regulation principles:

Better Regulation	Principles of REx	Outcome-based regulation	Earned autonomy	Operator performance	Transparency	Public Engagement	Enforcement
Transparent	Y	Y			Y	Y	Y
Accountable	Y				Y	Y	
Proportionate	Y	Y		Y			
Consistent	Y			Y			Y
Targeted	Y	Y	Y	Y			

6.8 The table below sets out more details of the different elements of the programme, the outcomes and benefits expected, and its relationship with the principles of better regulation. Further details of the outcomes to be delivered through each workstream, and the timescales involved, will be included in the Commission's Corporate Plan for 2009 to 2012.

Fig 2: Principles of Regulating with Excellence Programme

Workstream	Purpose	Work Strands	Benefits	Success Criteria
Outcome-based regulation	The Commission will define the outcomes that it expects the operator to achieve and use a risk assessment methodology to focus its efforts on the areas most important to it. This will recognise that the operator should have the flexibility to design and use processes appropriate to its business model and that provide the outcomes the Commission expects it to achieve.	<p>Review existing Regulatory Imperatives to identify a hierarchy of outcomes, grounded in the third licence;</p> <p>Develop a tool to undertake a high level risk assessment of each of the hierarchy of outcomes;</p> <p>Develop a methodology to use the high level risk assessment to inform the design and application of all aspects of our regulatory work;</p> <p>Publish Imperatives;</p> <p>Populate risk assessment tool and apply outcomes.</p>	<p>A clear understanding of the outcomes the Commission expects the operator to achieve;</p> <p>A more focussed relationship with the operator who will understand what we expect it to deliver and why and will know it has the relevant freedoms to do this</p> <p>Resources targeted on the areas that matter to the Commission most in fulfilling its statutory duties;</p> <p>Transparency in the way the Commission focuses its efforts;</p> <p>The ability to know where things have gone wrong and be able to take action.</p>	Development and publication of Regulatory Imperatives and of a tool which enables the undertaking of a high level risk assessment of each of the hierarchy of outcomes that receives broad endorsement by a range of stakeholders.

Principles of Regulating with Excellence Programme

Workstream	Purpose	Work Strands	Benefits	Success Criteria
Earned autonomy / proportionality	To recognise and take account of risk, operator incentives and past performance (organisational capability and processes) in undertaking the Commission's regulatory work thus avoiding wasted effort.	<p>Selective review of the third licence to identify requirements that might be reduced or disapplied, e.g. by reliance on operator's processes / assurances;</p> <p>Assess the opportunities to reduce or disapply licence requirements based on the high level risk assessment; clarity of operator incentives to deliver desired outcomes; and the past performance of the operator;</p> <p>Consider risks which might be mitigated and agree appropriate changes with the operator;</p> <p>Record agreed changes (e.g. through protocols);</p> <p>Undertake a review of vetting arrangements.</p>	<p>The Commission will have the opportunity to apply licence conditions in a way that recognises Camelot's commercial skills, its past performance, its incentives and key risks.</p> <p>It will avoid wasted and misdirected effort on the part of the Commission.</p> <p>It will assist the Commission in developing a regulatory approach which is more closely aligned with the better regulation agenda.</p> <p>It allows the operator greater regulatory freedoms.</p>	Third licence requirements reduced or disapplied in accordance with methodology agreed by Commissioners and agreed with the operator.

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Workstream	Purpose	Work Strands	Benefits	Success Criteria
Operator performance	To design measures of the effectiveness of the operator at maximising returns to good causes. This will involve selecting a short list of indicators of actual performance. They should be designed to be incorporated into a trigger point framework and should be accompanied by a clear system of reporting.	<p>Develop a set of performance measures and targets, enabling an early warning system for an 'at risk' operator;</p> <p>Develop a set of associated benchmarks where appropriate and a protocol for dealing with underperformance</p>	<p>Provide enhanced support of the third statutory duty by providing sophisticated measures of the performance of the operator;</p> <p>Enable better informed challenge of operator performance through a series of benchmarks;</p> <p>Clearly set out when and how the Commission should act in cases of under-performance.</p>	Development of tools to assess operator performance and the design of a trigger point framework which are accepted by Commissioners.

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Workstream	Purpose	Work Strands	Benefits	Success Criteria
Transparency	To support the desire for increased transparency in our policy, decision-making and communications processes. To be more accountable and to ensure that decisions and decision-making processes are clearly recorded and understood by our stakeholders.	<p>Understand the legal and other requirements for public bodies in regard to disclosing regulatory decisions; the wider transparency context; and, recommended Government best practice;</p> <p>To be clear about the NLC's current approach to decision-making and its policy to publishing regulatory decisions;</p> <p>To develop a draft NLC Statement on our approach to Transparency for discussion with stakeholders;</p> <p>To develop a framework to facilitate the recording, categorisation and publication of our decisions for the public record.</p>	<p>Having a clear position on transparency and clear structures in place will improve organisational effectiveness;</p> <p>It will assist the Commission in responding to Freedom of Information requests and will deliver its commitment to be an open and transparent regulator;</p> <p>It will also provide the operator and other stakeholders with a clear understanding of how the Commission makes decisions, and the reasons why it has made particular decisions.</p>	The basis of the Commission decision-making process is agreed by Commissioners and decisions arising are made public on the Commission's website.

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Workstream	Purpose	Work Strands	Benefits	Success Criteria
Public Engagement	<p>The workstream will take into account the opportunities for consultation and other public dialogue arising from all other <i>Regulating with Excellence</i> workstreams and from any part of the Commission's policy development work.</p> <p>It will produce an approach to public engagement which will form an integral part of the way the Commission goes about its business.</p>	<p>Decide how the Commission will proceed with public engagement;</p> <p>Create a framework to prioritise areas for public engagement activity;</p> <p>Support the work of other <i>Regulating with Excellence</i> workstreams;</p> <p>Increase engagement with the public in the Commission's regulatory activities.</p>	<p>It will give the Commission a clear position on its approach to public engagement;</p> <p>It will support the output of the other workstreams and improve the robustness of the recommendations;</p> <p>It will move the Commission's culture to become more outward-facing and public aware;</p> <p>It can prevent the Commission from pursuing an exclusively regulator - or operator - driven agenda;</p> <p>It will assist the Commission in demonstrating that its decisions reflect public opinion, and thereby be more in tune with contemporary regulatory best practice;</p> <p>It will provide evidence to support Commission decisions.</p>	<p>Commission decision on how it will proceed with public engagement and the development, as appropriate, of a framework to prioritise areas for public engagement activity.</p>

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Workstream	Purpose	Work Strands	Benefits	Success Criteria
Enforcement	<p>The Commission will review current enforcement arrangements and how these support the Commission's statutory objectives.</p> <p>The Commission aims to adopt the most appropriate enforcement arrangements necessary in order to provide:</p> <ul style="list-style-type: none"> • incentives to comply with licence obligations; • penalty sanctions where needed; • restorative justice where needed. 	<p>Review the range of enforcement sanctions available.</p> <p>Draft and publish for consultation an enforcement policy which sets out the general principles for Commission enforcement activities and the decision making process that leads the Commission to a particular course of action.</p>	<p>Greater clarity in the NLC enforcement approach for the operator and National Lottery players.</p> <p>Enforcement approach is proportionate and focused on outcomes, allowing the operator to demonstrate effective internal control and governance.</p> <p>Improved quality of enforcement information in the public domain.</p> <p>Better linkage between enforcement and other regulatory aspects of NLC's role (e.g. compliance audits and earned autonomy).</p>	<p>Publication of a Commission enforcement policy that is broadly endorsed by a range of stakeholders.</p>

Annex A

Background to Better Regulation

Within Government, better regulation is responsibility of The Better Regulation Executive (BRE). It is part of the Department for Business, Enterprise and Regulatory Reform (BERR) and has overall responsibility for the Government's commitments to:

- Regulate only when necessary;
- Set tough targets for reducing the cost of administering regulations; and
- Ensure inspection and enforcement of regulation is proportionate and risk-based.

This involves working with other government departments and regulators to:

- Scrutinise new policy proposals;
- Achieve effective new regulations;
- Make it easier to change or remove regulation, where beneficial;
- Reduce existing regulatory burdens affecting business, the third sector and frontline staff in the public sector;
- Improve transparency and accountability for regulation;
- Effectively communicate regulatory changes; and
- Drive forward the better regulation agenda in Europe.

The Five Principles of Better Regulation

A key part of the BRE's work has been to determine five key principles of regulation, which are now a cornerstone of the better regulation strategy and implementation. These state that any regulation should be:

- Transparent;
- Accountable;
- Proportionate;
- Consistent; and
- Targeted – only at cases where action is needed.

The Hampton Review

In 2004, Sir Philip Hampton was asked by the Government to undertake a review of inspection and enforcement activity with a view to reducing burdens whilst not compromising regulatory standards or outcomes. The review concluded that although there was much good in the

current system, problems remained, with patchy use of risk assessment, a lack of joined up approaches and too many overlapping administrative requirements.

It was recommended that the Government endorse seven principles of effective inspection and enforcement ('the Hampton Principles'). This was accepted and the Government committed to give the principles a statutory footing through a statutory code. The Compliance Code was subsequently given effect on 6 April 2008 through the Legislative and Regulatory Reform Act 2006.

The Standard Cost Model

In its 2005 report, *Less is More*, the Better Regulation Commission (BRC) recommended that the Government measure the administrative burdens it imposes, set targets for their reduction and publish Simplification Plans which explain how this will be achieved. The Government accepted the recommendations of the report, completed the measurement, set targets and published its first simplification plans during 2006. Departments now use a standard cost model to measure administrative burdens, while the Government has introduced new guidelines to make it quicker and easier to tackle unnecessary, over-complicated regulation.

The SCM methodology, developed in Holland, measures administrative activities that organisations must carry out to comply with a particular regulation. It focuses on the administrative cost imposed by a regulation, not on its policy objectives. The model is used by a number of countries within the European Union, to provide consistency. These countries form the SCM Network.

Adapting the model for the UK

The SCM model was adapted for the UK and used to measure administrative burdens imposed by each area of government. These results were used to help departments and agencies develop their Simplification Plans. All future regulatory proposals will be costed using the SCM.

The Macrory Review

The Government has committed to implementing the Hampton agenda. As well as the recommendations that informed the Compliance Code, Hampton also found that regulators' penalty regimes were cumbersome and ineffective and recommended that a comprehensive review of these regimes should take place.

The Macrory Review '*Regulatory Justice: Making Sanctions Effective*', conducted as a result of the Hampton Review, set out a blueprint for transforming the regulatory sanctioning regime in the UK. The Review found that many regulatory sanctioning regimes were over reliant on criminal prosecution and were lacking in flexibility. It made a number of recommendations aimed at ensuring that regulators have access to a flexible set of sanctioning tools that are consistent with the risk-based approach to enforcement outlined in the Hampton Review.

Next Steps on Regulatory Reforms

Having made real progress over the last ten years, the Government has now set out how it will continue to improve regulation in the future.

Continuing to deliver better regulation is central to the UK's economic aims:

- Meeting the challenges of globalisation;

- Improving productivity; and
- Promoting innovation.

The Government published the document 'Next Steps on Regulatory Reform' in 2007, which sets out a range of initiatives that will help realise the benefits of better regulation for businesses, third sector organisations and the public sector frontline.

The Department for Business, Enterprise and Regulatory Reform (BERR) leads the Government's drive on better regulation. The 'Next Steps on Regulatory Reform' document sets out how the department will continue to improve its own regulatory performance, plus the steps the Government will take to drive improvement.

Key objectives

The document sets out three key aims:

1) Target simplifications to improve the effectiveness of regulation by:

- Rethinking consumer protection legislation and working to make employment law more straightforward for all parties (this forms BERR's Simplification Plan.);
- Relieving the burden of health and safety via sector-specific risk assessments for small and lower-risk businesses;
- A health and safety review to improve outcomes and ease the burden on low-risk businesses; and
- Implementing significant measures within the BERR Simplification Plan.

2) Help people understand regulation through:

- High quality and timely guidance; and
- Better communication of change.

3) Hold government and regulators to account by:

- Working with Parliament;
- Creating a statutory duty on regulators to address burdens; and
- Applying the principles of the Regulators' Compliance Code to public service inspectorates.