

Gambling Commission response: What next for the National Lottery

1 April 2022

1 Executive summary

- 1.1 The Commission refers the Select Committee to the written evidence submitted 10 September 2021 for information on the background to the National Lottery and previous Licence competitions.
- 1.2 The Fourth National Lottery Licence Competition launched in August 2020. Phase One Applications were received in April 2021 and Phase Two Applications were received in October 2021. We announced the Preferred Applicant on 15 March 2022. The Competition is now in the standstill period, which has been extended following correspondence from Applicants on the Competition Outcome.
- 1.3 On 1 April 2022 the Commission informed all Applicants that at 19.29 on 31 March 2022 it was notified that proceedings were filed by *Camelot UK Lotteries Limited* in the Technology and Construction Court seeking, inter alia, the set aside of the Commission's decision to appoint *Allwyn Entertainment Limited* as the Preferred Applicant for the Fourth Licence. Given the notification of proceedings, the Commission will act as if the Concession Contract Regulations apply for the purposes of bringing into effect an automatic suspension under Regulation 56(1).
- 1.4 The Gambling Commission has a strong track record of safeguarding the National Lottery and ensuring that it is run with integrity, protects players and maximises contributions to Good Causes. We are building on this success and continue to run a fair and transparent competitive process that provides opportunities for innovation and creativity while protecting the unique status of the National Lottery.

2 Introduction

- 2.1 The Gambling Commission is the UK's independent, statutory body responsible for awarding the licence to run the National Lottery. It is also tasked with regulating the National Lottery to ensure propriety, the maximisation of returns to Good Causes, as well as safe and fair play. We regulate the National Lottery under the National Lottery etc. Act 1993 and regulate commercial gambling in Great Britain in accordance with the Gambling Act 2005.
- 2.2 As announced on 4 August 2021, the current Licence is due to expire 31 January 2024. Our role is to run the Fourth National Lottery Licence Competition and, subsequently, regulate the next Licence.
- 2.3 We have designed the Competition to allow for genuine competition between Applicants; to provide Applicants with the opportunity to propose innovative solutions, whilst ensuring that

the Commission's Statutory Duties are met; and to deliver significant social value through the National Lottery, in terms of Good Causes Contribution as well as wider social benefit.

- 2.4 Given the current status per 1.2 above, our responses are essentially based on a collation of relevant information already in the public domain.

Fourth Licence background

- 2.5 The regulatory and market environment for the National Lottery has evolved since 2009, when the Third Licence was awarded. The Gambling Commission now takes, in line with best practice, an outcomes-based approach to regulation. There have also been significant changes in the market, for instance, through the increasing dominance and rapid evolution of technology-based products. The Gambling Commission engaged with DCMS and other stakeholders, undertook extensive research and incorporated recommendations from the Public Accounts Committee to develop a new Licence that will meet our Statutory Duties, the Government's objectives, and (we trust) public expectation in the evolved environment.
- 2.6 There will be changes to how the National Lottery is licensed and regulated under the Fourth Licence, bringing it into line with the Gambling Commission's commitment to be an evidence-led, risk-based and outcomes-focused regulator (see Annex A and D for more information on how this has been developed). The Fourth Licence has been designed to enable the next Licensee to continually adapt its operations to meet the needs of players in 2024 and beyond, while at all points requiring any development to be carried out in a safe and responsible way.
- 2.7 The Licensee will be held fully accountable for protecting players. Through the Competition process, the Successful Applicant will have demonstrated high standards of player protection, commensurate to its Games offering, including on prevention of underage or excessive play, and we will hold them accountable for their commitments during the Fourth Licence Term. We will retain strong enforcement powers and will use them, if necessary.
- 2.8 Key changes in the Fourth Licence include:
- i. **Focusing on outcomes:** Under the outcomes-focused regulatory model, the Commission will be less involved in day-to-day operations of the National Lottery, such as approving processes, or reviewing the Licensee's commercial decisions. Instead, the Licensee will take on greater responsibility for compliance with its obligations. The Commission will continue to monitor performance and react if, and when, there are concerns that the Licensee is failing to meet the terms of its Licence. The proposed regulatory model is based on learnings from the Third Licence, as well as wider regulatory best practice. This includes, for example, the Cabinet Office's Regulatory Futures Review, which recommended that, where possible, regulators adopt an outcomes-focused approach.
 - ii. **An updated Incentive Mechanism:** A new Incentive Mechanism will ensure the Licensee's incentives and delivery are closely aligned with contributions to Good Causes.
 - iii. **Protecting the Brand:** Recognising that the National Lottery is a national asset, the Licensee will be required to do everything it can to safeguard and promote the reputation of the National Lottery, as well as the value, integrity and strength of the National Lottery Brand.
 - iv. **A fixed 10-year Licence:** A fixed term means that the Licensee has a clear period for investment planning.

Competition background and Outcome

- 2.9 In November 2018, the Commission formally commenced the market engagement phase of the programme. Throughout the following 18 months, we spoke to businesses and investors from many different sectors, such as communications and media, to hear the best and most innovative ideas to take the National Lottery forward in the next stage of its

journey. Furthermore, we conducted research into overseas lottery markets to learn what opportunities could be harnessed in the design of the Fourth Licence.

- 2.10** A large portion of the Competition took place amidst the Covid-19 global pandemic, an issue which has posed challenges for all organisations, both within the public and private spheres. During this period of high uncertainty, we took every step to ensure a fair, open and robust competition for all Applicants. For example, we used Microsoft Teams meetings with all Applicants for any clarification meetings to ensure equal treatment for all.
- 2.11** The Third National Lottery Licence permits two six-month extensions to the Licence. Since launching the Competition, we have utilised both provisions to accommodate necessary changes to the Competition timeline:
- i. May 2020:** Having considered the market's feedback on the challenges posed by the Covid-19 global pandemic, we decided to delay the launch of the Competition by three months. To facilitate these changes, and ensure a smooth transition, we also added three months to the transition period and, subsequently, extended the Third National Lottery Licence by six months. During this period of high uncertainty, the extended timetable was designed to enable potential Applicants to make adequate preparations for a fair, open and robust Competition.
 - ii. August 2021:** We extended the timeline for Phase Two of the Competition, following representations from Applicants and experience from Phase One. The amended timeline saw four weeks added to the Phase Two Application stage and a further six weeks for evaluation. These changes provided an opportunity for Applicants to further refine their proposals and for the Commission to evaluate. To facilitate these changes, and ensure a smooth transition, we extended the Third National Lottery Licence by a further six months. Applicants and the current operator were notified of this.
- 2.12** Despite these challenges, interest in the Competition, and the Fourth Licence, remained encouraging throughout the process.
- 2.13** The Competition was divided into two stages: the initial Selection Questionnaire (SQ) Stage (SQ Stage) and the subsequent Invitation to Apply (ITA) Stage (ITA Stage), which was further divided into two distinct phases (Phase One and Phase Two).
- 2.14** A draft-version Invitation to Apply (ITA), Fourth Licence, and accompanying documents were made available to the market in December 2019. This was the final full phase of market engagement and an opportunity for interested parties to provide feedback on the draft documentation.
- 2.15** The Selection Questionnaire (SQ) was issued to potential Applicants on 28 August 2020, marking the launch of Competition. The SQ assessed whether, at that stage of the Competition, the proposed Licensee possessed the relevant professional and technical capacity and capability, as well as the financial and economic standing, to run an operation of the scale and complexity as the National Lottery. The Commission received seven responses, which it reviewed. Five Applicants were successful at SQ stage and were subject to Fit and Proper Checks, to further ascertain their suitability. They also received the final ITA, including the Licence, and supporting Competition documents.
- 2.16** On 4 February 2021, during the Applicant Game Feedback process¹ (prior to the Phase One submission deadline), the Commission was notified by one Applicant of their intention to withdraw from the Competition. They indicated that they would no longer participate directly in the Competition in the capacity of an Applicant, as they intended to partner as a Key Subcontractor to another Applicant.

¹ This process reviewed Game proposals submitted by Applicants during the Competition to identify potential areas of contention and provided feedback to Applicants prior to them submitting their proposals.

- 2.17** The ITA set out the National Lottery opportunity, together with the process and requirements associated with submitting an Application, and information as to how Applicants are to be evaluated. It was split into Phase One and Phase Two. A phased approach, with no Applicants being removed from the competition at Phase One, was selected to provide Applicants the opportunity to obtain feedback on the strengths and weaknesses of their Application, and areas for improvement, ahead of submitting their final Application at Phase Two.
- 2.18** After Phase One, all four Applicants who had submitted Applications received written feedback from the Commission², which was intended to give them an opportunity to address any apparent omissions, ambiguities or risks identified by the Commission prior to submitting their final Phase Two Applications. No scores were given at Phase One and there was no down select³ of Applicants. All Applicants attended meetings with the Commission to clarify any aspects of the feedback.
- 2.19** Phase Two Applications were received from four Applicants by the 15 October 2021 deadline and all Applicants took advantage of the Commission's offer to present their Applications to the Commission in person.
- 2.20** Propriety, Protecting Participants' Interests and Financial Strength were evaluated using Pass/Fail Criteria and both the Preferred Applicant and Reserve Applicant met all of the relevant 'pass' criteria. The other three areas (Licensee's Proportion of Surplus; Good Causes Contribution; and Business Plan) combined to form the Total Score, using a relative scoring mechanism. Licensee's Proportion of Surplus accounts for 15% of the Total score and Good Causes Contribution and Business Plan Areas are scored in conjunction with each other and account for the remaining 85% of the Total Score.
- 2.21** From an evaluation perspective, these three areas are interlinked because how an Applicant proposes to operate the Lottery, as set out in its Business Plan, has a bearing on how much income it expects to generate and how much cost it will incur, which in turn impacts on the proportion of the surplus⁴ that it proposes to retain (to cover its costs) and the proportion that is expected to contribute to Good Causes. Under the Fourth Licence Incentive Mechanism, the Good Causes Contribution will be dependent on the Surplus generated by the operation of the National Lottery. This differs from the Third Licence, where the majority of proceeds to Good Causes were directly dependent on sales only.
- 2.22** As set out in Section 8.6.2 of the ITA, "*Solution Risk Factor (SRF) was used to address the impact of cross-cutting aspects of an Applicant's Business Plan. The SRF enables the Commission to give consideration to interactions between different aspects of the Business Plan and to any issue which arises from one or more of the five separate areas of the Business Plan assessment (Transition, Branding, Portfolio, Channels, Operations) where, irrespective of the level of risk that issue presents in any single area, that issue gives rise to incremental risk when considered in the context of two or more individual areas (a 'solution-level' risk).*"
- 2.23** Business Plan Evaluators considered risks raised during evaluation of their respective areas, and those provided by Applicants in their Risk Registers. Following consideration of whether these risks fall into the solution risk areas, the Commission is satisfied that all potential SRF risks have been adequately addressed in individual Business Plan Areas across all Applicants, and do not give rise to further risk when considered in the context of two or more individual areas (a 'solution-level' risk). Therefore, the application of SRF is not

² Phase One submissions were received 16 April, feedback was provided 16 July simultaneously to all Applicants.

³ At Phase One, the Commission's intention was to provide feedback on proposals so that all Applicants had the opportunity to address such feedback for their Phase Two (final) submissions. Therefore, all Applicants were invited to continue to Phase Two regardless of the amount, or nature, of the feedback on their proposals at Phase One.

⁴ Under the Fourth Licence Incentive Mechanism, there are categories of costs which are excluded from the calculation of the Surplus (and therefore borne solely by the Licensee and not shared with Good Causes). Allowable costs are those costs which are shared through the Surplus.

applicable to the evaluation of any Applicant's Business Plan Area and a SRF of 0% has been applied for the purposes of score calculation.

- 2.24** In practice, the Total Business Plan Mark (following the application of the SRF) represents only one component of the Total Score and to determine the Competition outcome it is necessary to also take into account the other components, being Proposed Good Causes Contribution and Proposed Licensee's Proportion of Surplus. Accordingly, it does not follow that the Applicant which performs the best in the Business Plan Areas will necessarily be the Preferred Applicant.
- 2.25** So long as an Applicant passes the minimum Business Plan Mark thresholds (which both the Preferred Applicant and Reserve Applicant have done for all Business Plan Areas), it can have a lower Total Business Plan Mark than another Applicant but have a higher Business Plan and Good Causes Contribution Score and a higher Total Score depending on its relative score for Licensee's Proportion of Surplus and Good Causes Contribution.
- 2.26** Phase One Applications have been reviewed and Phase Two Applications have been evaluated in accordance with the ITA and subsequent ITA updates communicated to Applicants via Applicant Notes and responses to Applicants' Clarification Questions; all of which clearly set out what information should be provided in Applications and how Applications would be evaluated by the Commission.
- 2.27** Following the completion of Phase Two, the outcome of the ITA evaluation ranked *Allwyn Entertainment Limited* as the proposed Preferred Applicant and *Camelot UK Lotteries Limited* as the proposed Reserve Applicant.

3 How effectively has the fourth National Lottery licence competition fulfilled the Gambling Commission's objectives?

- 3.1** The Competition related strategic objectives are summarised as follows, with supporting the Commission's commercial objectives (as set out in Annex B):
- Ensuring high standards of propriety
 - Delivering a strong focus on Participant protection
 - Maximising Good Causes Contributions
 - Shaping a robust and fair competition that delivers an 'outcomes-based' licensing regime
 - Growing the value of the National Lottery as a public asset
 - Delivering a transition that is well planned and without disruption to the National Lottery

Ensuring high standards of propriety

- 3.2** In line with its Statutory Duties, the Commission has continued to ensure high standards of propriety. The Commission designed the ITA evaluation so that propriety responses were evaluated on a Pass/Fail basis to ensure high standards, with clear requirements that Applicants were required to meet to receive a pass. Failure to pass the Pass/Fail criteria in propriety would result in that Applicant failing the Competition. In determining the Pass/Fail outcome for each Applicant, the Commission considered its entire Application, and not just the specific response section for propriety. All Applicants demonstrated to the Commission's satisfaction that they met all the relevant Pass/Fail criteria for propriety.
- 3.3** A requirement of the Competition was that Fit and Proper checks were performed to confirm that certain specified categories of person, who benefit from, or are involved in the management or activities of, the Lottery are Fit and Proper. While Fit and Proper checks are designed to ensure the Commission complies with its Statutory Duty relating to

propriety, these checks did not form part of the ITA evaluation process but have been run in parallel with the Competition by the Commission's Licensing Team. This process will continue through the Implementation Period and the Licence Term so that the Commission can be satisfied that the Licensee will be Fit and Proper at the point of granting, and throughout, the Fourth Licence. Based on the information supplied, all four Applicants are considered to be Fit and Proper at this point in time. Recognising our role as a responsible regulator we are also satisfied that no Application is impacted by sanctions related to the conflict in Ukraine.

- 3.4** As part of the Competition, the Commission has also contacted regulators from jurisdictions in which Applicants and/or their parent companies/related group members have lottery or gambling operations in order to validate the self-declarations made by Applicants against the exclusion criteria set out in the SQ, the requirements of the ITA and requirements arising from the Commission's Statutory Duties. This process is separate from the Fit and Proper checks and focused on whether Applicants were in breach of their operating licence for lotteries they operate.

Delivering a strong focus on Participant protection

- 3.5** The Commission also ensured a strong focus on Participant protection through the design of ITA evaluation so that protecting Participants' interests responses were evaluated on a Pass/Fail basis. This ensured high standards and clear requirements for Applicants to meet in order to receive a pass. As above, failure to pass the Pass/Fail criteria in protecting Participants' interests would result in that Applicant failing the Competition. In determining the Pass/Fail outcome for each Applicant, the Commission considered its entire Application, and not just the specific response section for protecting Participants' interests. Two of the Applicants failed to demonstrate to the Commission's satisfaction that they met all the relevant Pass/Fail criteria for protecting Participants' interests.

Maximising Good Causes Contributions

- 3.6** The Commission has designed the evaluation approach to "*identify the Applicant that delivers the highest credible and deliverable Good Causes Contribution for the Fourth Licence whilst first ensuring support for the Commission's Statutory Duties of propriety and protecting Participants' interests*"⁵. This has been achieved through healthy competition and a new Incentive Mechanism. The proposed Preferred Applicant's proposed Good Causes Contribution is higher than the Commission's initial forecasts for the Fourth Licence Competition.
- 3.7** As part of the evaluation criteria for each Business Plan Area, the evaluators modulated the Business Plan scores to reflect the confidence that they had in the financial projections submitted by the Applicant as a means of assessing the credibility and deliverability. If the evaluators did not consider the Business Plan to be credible or deliverable in any particular aspects, then the score for that Business Area was reduced to reflect those concerns.

Shaping a robust and fair competition that delivers an 'outcomes-based' licensing regime

- 3.8** As well as taking into consideration broader market views, the Competition design adopted best practice principles of Public Sector competitions⁶ and is consistent with the Concession Contract Regulations 2016⁷. It is expected that these elements contribute to

⁵ As per Section 7 of the ITA

⁶ The Commission consulted Cabinet Office Guidance including Procurement Policy Notes, feedback from Infrastructure Projects Authority findings, Government Commercial Function publications such as the Sourcing Playbook, in determining best practice.

⁷ Where the Concession Contract Regulations 2016 are silent on any particular matter, the Commission has had regard, by analogy, to the position under the Public Contract Regulations 2015 and any relevant case law.

the maintenance of a level playing field for all interested parties, whether they be new entrants or incumbents, during the Competition.

- 3.9** The Commission has focused on shaping a robust and fair competition that delivers an 'outcomes-based' licensing regime that:
- i. Is fair and transparent throughout
 - ii. Allows for genuine competition between Applicants.
- 3.10** Since the commencement of the Competition, the Commission has continued to run a transparent process, for example: providing feedback to Applicants and responding to their clarification questions, as appropriate; and holding Commission-to-Applicant briefing sessions to allow Applicants to ask, and receive answers to, more specific questions.
- 3.11** The Commission has sought to design a Competition that is fair and transparent; which allows for genuine competition between Applicants; which provides Applicants with the opportunity to propose innovative solutions while also providing support for the Commission's Statutory Duties; and which delivers significant social value through the National Lottery, in terms of the Good Causes Contribution as well as wider social benefits.
- 3.12** Since launching the programme, we have implemented a range of measures to ensure all Applications are assessed in a fair and objective way, minimising the possibility of any party gaining an unfair advantage.

Examples of these measures include:

- Licence design: Our outcomes-based approach opens up the market, as Applicants are not required to follow a similar approach to the current operations and have the freedom to propose new solutions, so long as Statutory Duties are met
- Media and communications protocols: A set of protocols provide guidance to all Applicants on how they should engage the media and stakeholders during the course of the Competition
- Availability of data: A virtual data room provides all Applicants with equal access to all relevant documentation. Furthermore, interested parties were consulted on required content during the market engagement phase
- Applicant input: Applicants were able to submit commentary to the Commission on particular documents issued
- Providing feedback: Applicants received Phase One feedback from the Commission to assist them with their responses at Phase Two.

- 3.13** Four initial Applications were submitted⁸ and reviewed in accordance with the Phase One process set out in the ITA. All four Applicants took advantage of the Commission's offer to present their Applications to the Commission virtually (due to Covid-19 restrictions).
- 3.14** The Commission then reviewed the Applications against the ITA evaluation criteria⁹ and provided extensive written feedback to Applicants for each of their response areas¹⁰. The purpose of feedback was to give Applicants an opportunity to address any apparent omissions, ambiguities or risks identified by the Commission prior to submitting their final Phase Two Applications. Accordingly, no scores or marks were awarded at Phase One and there was no down selection of Applicants. Applicants accepted the Commission's offer to

⁸ All initial Applications were submitted by the 16 April 2021 deadline

⁹ Phase One Feedback addressed Pass/Fail areas, i.e. Propriety, Protecting Participants' Interests and Financial Strength, as well as Business Plan proposals relating to Transition, Branding, Portfolio, Channels and Operations

¹⁰ At Phase One, the Commission's intention was to provide feedback on proposals so that all Applicants had the opportunity to address such feedback for their Phase Two (final) submissions. Therefore, all Applicants were invited to continue to Phase Two regardless of the amount, or nature, of the feedback on their proposals at Phase One.

attend individual Feedback sessions at which Applicants were able to seek further clarity on the Feedback. Applicants were offered equal time for the Feedback sessions. Written records of each session were provided to the Applicant concerned and any clarifications relevant to all Applicants which emerged were shared with all Applicants.

- 3.15** On 15 October 2021, four Applicants submitted their final written Phase Two Applications and took advantage of the Commission's offer to present their Applications to the Commission in person. The submitted written Applications underwent compliance checks to ensure that each Applicant's written Application included responses to all relevant areas and that page limits were adhered to. Following successful completion of compliance checks, all four written Applications were evaluated by the Commission in accordance with the Phase Two process set out in the ITA.
- 3.16** Evaluation consisted of an assessment and analysis of narrative responses and documents provided by Applicants and a subsequent mechanical calculation. The Commission has evaluated four key areas as part of its assessment, comprising of:
- Propriety, Protecting Participants' Interests and Financial Strength on a Pass/Fail basis
 - Licensee's Proportion of Surplus using a relative scoring mechanism
 - Good Causes Contribution using a relative scoring mechanism
 - Business Plan awarding marks for each of the five Business Plan areas (Transition, Branding, Portfolio, Channels, and Operations (Op Model and Technology) (each equally weighted). Each Business Plan Area was marked between 0-15, based on the credibility and deliverability of Applications, taking into account the Proposed Good Causes Contribution¹¹. Once the total combined mark for all five Business Plan Areas had been determined, the Solution Risk Factor (SRF) of up to 15% was applied (if relevant) to each Applicant's Business Plan mark. The application of SRF is not applicable to the evaluation of any Applicant's Business Plan Area and a SRF of 0% has been applied for the purposes of score calculation.
- 3.17** The Applicant that received the highest Total Business Plan Mark (following the application of the SRF) was awarded 100% in this area of evaluation, with all other Applicants scored relative to this. This score was then multiplied by the Good Causes Contribution score to calculate the combined Business Plan and Good Causes Contribution score. This combined score was given a weighting of 85%.
- 3.18** Applications that did not 'pass' one or more of the mandatory Pass/Fail areas (Propriety, Protecting Participants' Interests and Financial Strength) or failed to meet the two Business Plan threshold marks were excluded from relative scoring mechanics¹². The two Business Plan threshold marks were, first, the requirement to achieve a minimum mark of at least 6 out of 15 across all 5 Business Plan areas; secondly, the requirement to achieve a minimum mark of 9 out of 15 in at least half (3 or more) of the Business Plan areas.
- 3.19** The Applicant that ranked first following evaluation has been provisionally selected as the Preferred Applicant. The next highest placed Applicant has been provisionally selected as the Reserve Applicant.

¹¹ As explained at section 8.6.3 of the ITA: 'credibility' was evaluated based on how likely (by reference to supporting evidence) the proposal for the Business Plan area would meet the Proposed Good Causes Contribution; whilst 'deliverability' was evaluated based on how likely the proposal for the Business Plan area would be achieved and successfully delivered.

¹² In line with the ITA evaluation criteria and section 8.9 of the ITA, Applicants must meet the Pass criteria for propriety, protecting Participants' interests and financial strength and must fulfil all Pass criteria across their entire Application in order to be included in the final ranking of Applicants following Evaluation.

- 3.20** The review at Phase One and evaluation at Phase Two were carried out in accordance with the Evaluation Approach (as set out in the ITA, see Annex C) and observed by a Commission appointed team consisting of three independent commercial specialists (Oversight Team).
- 3.21** The Oversight Team provided the Senior Responsible Owner (SRO) with real-time assurance that the approach set out in the ITA and subsequent Applicant Notes was being followed and was delivered in a manner consistent with delivering a fair, open, and transparent competition where Applicants were treated equally. The Oversight Team final report, dated 25 January 2022, stated: *“Overall, the Oversight Team is confident that the proof points reviewed and observed demonstrate that the approach followed was in line with the agreed 4NLC Evaluation Approach. The Oversight Team would rate the Phase Two Oversight process as GREEN¹³”*.
- 3.22** The Outcome Report and other documents produced during the decision-making process have been reviewed by the Commercial Director and the 4NLC Legal team to ensure that the Commission can be confident that it has acted in accordance with its statutory and public law duties and that its decision making is robust.

Growing the value of the National Lottery as a public asset

- 3.23** The Commission focused on growing the value of the National Lottery as a public asset through setting an obligation in the Fourth Licence for the Licensee to protect the National Lottery through Matters to be Protected. The Commission also achieved this by providing Applicants the opportunity to propose innovative solutions, whilst ensuring that the Commission’s Statutory Duties are met. This was through allowing Applicants the opportunity to propose new Games that received feedback from the Commission through the Phase One Applicant Game Feedback Process and Phase One Feedback process.
- 3.24** The new Incentive Mechanism ensures the Licensee’s incentives and delivery are better aligned with contributions to Good Causes and therefore growing the value of the National Lottery as a public asset. Under this mechanism the Licensee’s profits will be more closely aligned to the returns to Good Causes than ever before.
- 3.25** The Commission also ensured that Applicants were aligned to delivering significant social value through the National Lottery, in terms of returns to Good Causes as well as wider social benefits, for example, incorporating practices such as employing a diverse workforce, effectively developing personnel and collaborating with the voluntary and community sectors across the operation, protecting the environment and creating opportunities for Small and Medium sized Enterprises (SMEs).

Delivering a transition that is well planned and without disruption to the National Lottery

- 3.26** The Commission has also put in place plans to ensure that the transition from the Third to Fourth Licence is well planned and without disruption to the National Lottery. This is set out in more detail in Section 5 below.

¹³ A “Green” rating (on the red, amber, green scale) indicates no issues to be resolved

4 What will the way in which returns for good causes are calculated under the fourth licence mean for the distributing bodies and the projects they support?

- 4.1** Since launching in 1994, National Lottery players have collectively raised more than £45 billion for 660,000 Good Causes across the UK, transforming lives and contributing to the arts, sport, heritage and communities.
- 4.2** While the Gambling Commission is responsible for managing the Fourth National Lottery Licence Competition, and regulating the National Lottery, the distribution of generated funds is separate. This is carried out by independent distribution bodies, overseen by the Department for Digital, Culture, Media and Sport (DCMS) and the devolved administrations.
- 4.3** In 2018, the House of Commons' Public Accounts Committee concluded an inquiry into the National Lottery. This was followed by a number of recommendations, which have already been addressed by DCMS, the Commission, and the current operator for the purpose of the Third National Lottery Licence. As referenced, the lessons learned from the Committee's report were embedded across our policy work during the design of the Fourth Licence.
- 4.4** The next Licensee will be required to foster stronger relationships with the distributors of National Lottery funding to further strengthen the link between the National Lottery Brand, its players, and Good Causes. We will also require the Licensee to report regularly against key performance indicators to demonstrate the performance of the National Lottery Brand.
- 4.5** We will build on the National Lottery's success through a restructured Incentive Mechanism that will ensure the Licensee's incentives and delivery are closely aligned with contributions to Good Causes. The Licensee will, therefore, be incentivised to develop and grow National Lottery sales and, thereby, its own returns and the contribution to Good Causes. The Commission's approach to designing the Incentive Mechanism is intended to ensure that the Licensee is incentivised to maximise Good Causes Contribution throughout the Fourth Licence Term by aligning Licensee profits to the same measure.
- 4.6** Recognising that the world is likely to be very different by the time the Fourth Licence concludes in 2034, we have designed the Licence in such a way that it will enable and incentivise the Licensee to adapt, in a safe and responsible way, according to technological advancements, new opportunities, and changes in consumer preferences. The new Incentive Mechanism will address criticism of previous models by not differentiating Good Causes Contributions based on Game type, thereby, making the Licence more adaptable to changing consumer trends.
- 4.7** The Competition is now nearing completion, with the recommended Preferred and Reserve Applicants announced 15 March 2022. The recommended outcome has demonstrated that the Commission has effectively developed a Competition process in line with its Statutory Duties and objectives.

5 What needs to happen to ensure a smooth transition between the third and fourth licence period?

- 5.1** A smooth and successful transition from one Licence period to the next will ensure continuity of the National Lottery, while also minimising disruption to participants and Good Causes. We have advised Applicants to expect an Implementation Period of around 22 months to allow time for a smooth and successful transition. Applicants have developed their submissions based on this assumption.

- 5.2** The transition period will be a transformational programme of work that will enable us to proactively build a trusting, and cooperative, relationship with the next Licensee. We have devised a strategy for managing the transition period that sets out:
- The contractual arrangements for managing the transition period (the Enabling Agreement and the Cooperation Agreement)
 - Our risk appetite and risk management approach
 - The level of oversight we will require to gain the requisite levels of assurance that the transition is being delivered in accordance with our objectives
 - Governance arrangements
 - Reporting requirements (key performance indicators, monitoring and oversight)
 - Resourcing arrangements
 - Contingency arrangements
- 5.3** During this time, the next Licensee will provide the Commission with regular status updates, testing and assurance activities and milestone reporting. It will attend regular operational and strategic governance forums to assure the Commission that it is undertaking all necessary activities for ensuing a successful migration of the National Lottery operations and its ability to commence the Fourth Licence.
- 5.4** This structure allows us to work with the next Licensee and its senior management to build confidence that all parties are ready to start the Licence and move into an outcome-focused Licence regime.

Execution of Enabling Agreement

- 5.5** Following standstill period, the Commission is to issue an Award Notification to the Preferred Applicant to formally notify them that they have been awarded the outcome and must proceed to execution of the Enabling Agreement.
- 5.6** The Enabling Agreement has a 5-day period envisioned for execution, which begins from Award Notification. This is to allow for submission of the Preferred Applicant's Resource Availability Assurance Statement (RAAS) and supporting evidence, and to compile and execute (where required) the Preferred Applicant's Approved Form Documents.
- 5.7** In preparation for Execution of the Enabling Agreement, the Commission issued an Applicant Note on 10 January 2022 to provide Applicants with details of the process to be used to address drafting issues within 'Award Documents' (these being the Enabling Agreement and the form of the Fourth Licence).
- 5.8** Additionally on 14 January 2022 the Commission followed up with an Applicant specific note to detail the issues identified in their Award Documentation and confirmed the process and deadline for addressing these.
- 5.9** Applicants responded with revisions and clarifications by the deadline of 28 January 2022, as instructed. The issues identified were addressed by Applicants to the Commission's satisfaction in each case.

Co-operation agreement

- 5.10** The Third Licence contains extensive provisions for assets to transfer to a new Licensee. The current and next Licensee are required to enter into a Co-operation Agreement, along with the Commission, to ensure data, information and processes are exchanged in a timely, open and transparent manner to ensure an orderly handover of National Lottery assets, services, infrastructure and products. The agreement has been signed by the current Licensee and the Commission. The Successful Applicant will be required to enter into the agreement ahead of the Implementation Period.

Enabling agreement

- 5.11** The core framework that shapes, and governs, the Implementation Period is the Enabling Agreement. This agreement takes the form of a commercial supplier/contractor contract and assists both parties in transitioning between Licences. It creates a rigorous framework for a well-structured transition, with governance and reporting requirements that assure us that the transition is being delivered effectively, and on time. It will identify all key deliverables from the successful Application and will align with its transition plan to deliver all elements by the start of the Fourth Licence.
- 5.12** We will enter into the Enabling Agreement with the Preferred Applicant. Fulfilling the requirements of the agreement will be a condition of the transfer of the National Lottery operation, and the commencement of the next Licence. The agreement will be in place for the entirety of the transition period and will cease once the Fourth Licence comes into effect.

Transition team

- 5.13** A dedicated Transition team has been established within the programme, separate from the Fourth Licence Competition team. This team is responsible for:
- Managing and overseeing the transition from the Third Licence to the Fourth Licence
 - Ensuring that the Commission is ready to regulate the Fourth Licence i.e. that it has the right resources, processes and systems in place for the duration of the Licence.
- 5.14** The Third Licence team will remain focused on maintaining the National Lottery and managing the performance of the current Licensee during the transition period. In addition to business-as-usual compliance and vetting activity, the team will react to incidents and manage significant investment proposals from the operator of the Third Licence.
- 5.15** The Transition team will receive a thorough handover as well as an integration of subject matter resources from the current Fourth Licence team to ensure a smooth and well-informed transition.
- 5.16** Our management and oversight of the transition arrangements is agnostic to the identity of the operator.

6 What will the outcome of the fourth National Lottery licence competition mean for the UK's wider lottery market?

UK lottery market overview

- 6.1** Throughout the period of the Third National Lottery Licence, there have been significant changes in the way consumers purchase products. In retail, for example, distribution has expanded to include petrol station forecourts, a wider range of supermarkets, and self-checkout terminals within retail stores. Online, new platforms, including mobile, have revolutionised the way players interact with the National Lottery.
- 6.2** In addition to technological changes, the relative proportion and total sales revenue of instant win games, especially Scratchcards, has increased during this period.
- 6.3** The lotteries market continues to evolve at pace, with more diverse channels and products being introduced worldwide. The policy underpinning the Fourth Licence seeks to build on Third Licence principles, while moving to a more outcomes-focused approach.

Society lotteries market

- 6.4** Society lotteries play a vital role in helping charities and other societies to run lotteries for Good Causes. In 2020, following our evidence-based advice on the relationship between society lotteries and the National Lottery, the government decided to increase the annual proceeds limit for society lotteries to allow them to benefit from greater flexibility to raise more funds for Good Causes. Since then, we have continued to work with government to ensure the effective delivery of their reforms to society lotteries.
- 6.5** Our advice to DCMS in 2017 was that changes to sales limits are likely to have minimal impact on the National Lottery. The reforms are designed to allow society lotteries to raise more money for the Good Causes they support and take careful account of the relationship between society lotteries and the National Lottery, to ensure that both sectors can thrive. A key distinction is that society lotteries can only offer smaller prizes, while the National Lottery is characterised by its large prizes.
- 6.6** DCMS recently concluded their review into the impact of the changes made to society lottery prize limits. They found that:
- Early indications show the changes are bedding in well
 - The changes are beginning to have the intended effect of allowing society lotteries to grow, while maintaining the unique position of the National Lottery
 - It is too soon to reach firm conclusions, especially given the impact of the pandemic
 - No further policy changes are considered necessary at this time
 - DCMS is committed to working with the Commission to keep this under review.
- 6.7** Our research has shown that in the last year, National Lottery sales appear to be stable, and half-year data indicates there may be a slight increase. It also shows that the market share remains consistent with previous years, with the National Lottery continuing to account for just over 90% of lottery market sales.
- 6.8** The Covid-19 pandemic has affected some society lotteries' ability to grow, and it is therefore too soon to see what the real impact of the 2020 proceeds and prizes increases have been.
- 6.9** We have committed to monitoring the impacts of the changes on both lottery markets, to ensure society lotteries are allowed to grow and increase their returns to Good Causes without detriment to the National Lottery. We have been monitoring participation in both since 2020, before the new limits came into effect.

Annex A – Development of Fourth Licence

The Fourth Licence has been developed to align with our approach to being an evidence led, risk based and outcomes-focused regulator



The Fourth National Lottery Licence has been developed in line with the following principles:

- Supporting **innovation** in the operation of the NL, including game design
- **Less prescription**, where appropriate, with a focus on achieving overarching outcomes and allowing for **future proofing**
- **Placing more responsibility on the Licensee**, where appropriate, to ensure outcomes are achieved
- Aligning incentives between the Licensee's **profitability and Good Causes**
- Supporting a more **streamlined and agile approach** to Section 6 Game Licensing
- Anchored by the **Commission's Statutory Duties** with respect to Participant Protection, Propriety and Good Causes

The 4NL Licence Policy has been developed to support these principles.

Evolution area	Description
Incentive Mechanism	New structure that incentivises the operator by more closely aligning profit with returns to good causes
Participant protection	Outcome-based obligation with operator providing assurance statements
Monitoring Performance	Regulatory Model is more outcome-focused, risk based, and evidence led
Channels	Outcome-based obligation to ensure easy access to National Lottery games
Length of Licence	Fixed 10-year period without scope for requests for extension by the operator, with up to 2-year extension period
Branding	Opportunity for creative use of the brand so long as this remains consistent with the statutory duties
Portfolio	Game licences (granted under s6 of the Act) require compliance with the s5 Licence. An outcome-focused and streamlined game approval process will apply.

Annex B – Commercial objectives

The following commercial objectives were, and remain, driven by programme objectives, the Statutory Duties and the DCMS Single Departmental Plan. The Commission's objective for the Competition was to run a process to award a fourth National Lottery Licence that:

1. Is fair and transparent throughout
2. Allows for genuine competition between Applicants
3. Provides Applicants the opportunity to propose innovative solutions, whilst ensuring that the Commission's Statutory Duties are met
4. Delivers significant social value through the National Lottery, in terms of returns to Good Causes, as well as wider social benefit
5. Successfully appoints the Applicant which proposes the highest credible and deliverable good causes contribution for the fourth licence, whilst ensuring support for the Commission's Statutory Duties
6. Award the new Licence by April 2022

Annex C – Evaluation Approach

Statutory Duties								
Propriety	Protecting Participants' Interests (including 4NL Trust)	Financial Strength	Licensee's Proportion of Surplus	Business Plan & Good Causes Contribution 85% of Total Score				
			15% of Total Score	Good Causes Contribution	Business Plan			
				Combined with Business Plan Score	Combined with Good Causes Contribution Score			
					Transition	Branding	Portfolio	Channels
Pass/Fail			Relatively scored	Relatively scored	Each Business Plan Area will be given a mark out of 15 against qualitative evaluation criteria, giving a total of 75 marks available (before SRF is applied). Total Business Plan Mark (following application of SRF) is then relatively scored			
Phase One	<i>Feedback provided</i>		<i>No scores. Feedback will be provided</i>	<i>No scores. Feedback will be provided</i>	<i>Mark thresholds do not apply, however feedback will be provided</i>			
Phase Two	<i>Pass/Fail</i>		<i>Scores and feedback will be provided</i>	<i>Scores and feedback will be provided</i>	<i>Mark thresholds will apply for Business Plan Areas and feedback will be provided</i>			

Annex D – Further detail of development of Fourth Licence

Development of Fourth Licence

