Guidelines on the implementation of Gambling (Venue Payments) Regulations 2016

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# Foreword

In 2014 the Government agreed to change the basis on which commercial venues are recompensed for hosting gaming machines. This decision was given effect by the introduction of the Gambling (Venue Payments) Regulations 2016 (the regulations). The change from a system of itemised, tightly controlled, schedules of weekly and monthly costs to a system of commission payments based on gaming machine turnover represents a significant change to the way venue costs are managed.

These guidelines are intended to provide information to assist Class 4 societies to implement commission-based payments and comply with the regulations. They are not intended to be a definitive or exhaustive guide. Ultimately societies are responsible for ensuring that they comply with the regulations.

The Department is committed to being a responsive risk-based regulator. We recognise that the transition to a completely new payment system and approach is difficult, and that there will inevitably be “teething problems”. Societies will be working out the best way to implement the new system and, in particular, how best to manage the two limits to ensure compliance. We will work with societies to assist them to understand their obligations and comply with the regulations.

Representatives of the Class 4 gambling sector worked with the Department in developing the policy framework for commission-based payments and have continued to work with the Department in developing this sector guidance. I am pleased that we can work together with the sector to develop better outcomes for both the sector and New Zealand communities. I would like to thank the sector representatives who have been involved in both the policy development and the development of these guidelines for their willingness to engage positively and constructively and to share their knowledge and expertise.

Gareth Bostock
Director, Gambling Compliance

# Overview of regulations

The Government has agreed to a new, commission-based payment system for commercial venues that host gaming machines. The new system is given effect by the Gambling (Venue Payments) Regulations 2016 (the regulations). The regulations come into effect on 3 October 2016. A description of the detail of the regulations is available on the Department of Internal Affairs’ website [here](https://www.dia.govt.nz/diawebsite.nsf/wpg_URL/Services-Casino-and-Non-Casino-Gaming-Venue-Payments-System?OpenDocument). The regulations are available [here](http://www.legislation.govt.nz/regulation/public/2016/0191/latest/DLM6917617.html?src=qs).

From 2 a.m. on 3 October 2016 the current payment system of venue cost schedules will no longer apply. The Gazette Notice: Limits and Exclusions on Class 4 Venue Costs will be revoked. Payments to venues will only be allowed in accordance with the regulations.

## Who do the regulations apply to?

The regulations apply to commercial venues that have a venue agreement with a corporate society. They do not apply to clubs that have gaming machines on their own premises.

However, if a club has gaming machines in a commercial venue and has a venue agreement with the venue operator, the regulations apply in respect of that venue and the club must make sure that any payments to the venue comply with the regulations.

## What will venues be paid?

Venues may be paid up to 1.28% of weekly turnover for any given week plus GST. This is subject to an annual limit of 16% of GMP exclusive of GST (net GMP). Total venue payments (excluding GST) for an individual venue for a financial year, or part year if applicable, must not exceed 16% of net GMP for that period.

Note that it is not mandatory to pay 1.28% each week – venues may be paid any commission rate up to 1.28%. The actual commission rate to be paid is a matter for societies and venues to negotiate. Nor do societies have to pay a percentage commission. For example, a society and venue could agree to a weekly flat rate. Provided the flat rate does not exceed 1.28% of turnover for any given week, this would comply with the regulations.

Societies cannot make any other payments to venues.

## What do the payments cover?

The commission payment replaces the old venue cost schedules and covers everything that was covered by those schedules. The commission rate is intended to be a fair and reasonable recompense for hosting gaming machines. Venues are expected to meet all of the costs of hosting the machines out of the commission payments, including development, enhancement and maintenance costs.

Societies can continue to pay society administrative costs provided they meet the requirement that they be actual, reasonable and necessary. However, societies must pay suppliers directly for those costs. They cannot ask the venue to pay for an item and then reimburse the venue. As a matter of good practice the Department would expect societies to maintain a schedule for each venue showing all assets and any costs or expenditure incurred, along with documentation justifying the spending e.g. invoices, receipts.

Some items are clearly either venue or society costs but there are some items that could be classed as either a venue cost or a society administrative cost depending on the circumstances. As a rule of thumb, anything that was paid or reimbursed under the old venue cost schedules would be paid for by the venue from the commission payment. Societies must be able to justify that any costs they pay meet the actual, reasonable and necessary test for society spending.

The table below identifies costs that are clearly venue or society responsibility, and some “grey areas”. The list is based on the current policy and guidance on venue cost schedules, and is not intended to be exhaustive.

## Venue vs society costs

|  |  |  |
| --- | --- | --- |
| Covered by the commission payment – cannot be paid separately by societies | Society responsibility – must be paid directly to the supplier of the goods or services | Could be venue or society depending on the circumstances |
| All operating costs that are caused by the presence of gaming machines at the venueInsurance on GMPConsumables e.g printer paper and toner, eftpos paperCleaning materialsStaff time and travel expenses for attending required training Development, enhancement and maintenance of the gambling area e.g.* Gaming room construction
* Paint
* Carpet
* Lighting
 | Gaming machines and basesAssociated cablingGaming machine stoolsService and maintenance of machinesOngoing charges for EMSVenue management systemsCoin scalesComputer to access EMS (if a separate computer is required or the venue doesn’t already have one)CCTV (as it relates to the gambling area)Security systems (as they relate to the gambling area)Air conditioning (for the gambling area)Payment to third party training providers e.g. for armed robbery training (but note that the venue is responsible for the cost of staff attending the training)Harm prevention materialsSignageItems required under the Act e.g. licence display | Installation of safes (if there isn’t already one in the venue)EFTPOS and associated phone lineInternet charges |

# Transitional arrangements

Although the regulations take effect on 3 October 2016 some transitional arrangements are required to allow for costs that are incurred but not yet paid before 3 October. There will also be a transitional arrangement for reporting in the first year to reflect that fact that payments will have been made under both systems. The transitional arrangements are set out below.

## Payment for costs incurred before 3 October 2016

The transitional provisions of the regulations provide that a society may reimburse costs incurred by a venue operator before 3 October 2016 as if the regulations were not in force. This means, for example, that societies can pay venues for costs incurred in the week before 3 October under its existing venue cost schedule. Such a payment would not count towards the annual limit of 16% of net GMP.

All costs incurred by venues from 3 October onwards are covered by the commission-based payment in accordance with the regulations.

## Venue agreements

Section 69(1)(b) of the Gambling Act provides that venue agreements must include an itemised list of the costs associated with the operation of Class 4 gambling at the venue. From 3 October 2016 that section is replaced by new section 69(1)(b), which provides that venue agreements must include:

The payments to be made by the holder of the Class 4 venue licence to the venue operator, which must be payments that comply with [the regulations].

The transitional provisions in the Gambling Amendment Act (No 2) 2015 provide that an agreement that is in force on the commencement of the regulations is, to the extent that it is inconsistent with the regulations, deemed to be amended to make it consistent with the regulations.

Effectively this means that the itemised list of costs will be deemed to be deleted, and any provision for payments that would exceed the limits in the regulations would be deemed to be reduced so as not to breach the limits.

The Department expects that societies will negotiate new venue agreements with all their venues within a reasonable period of time. The actual time period will depend on the particular circumstances for each society.

## Outstanding development, enhancement and maintenance reimbursements

Some venues will have development, enhancement and maintenance (DEM) costs that are being reimbursed by their societies but have not been fully reimbursed on 3 October. Societies can continue to reimburse DEM costs that were approved and incurred before 3 October 2016.

Societies can either reimburse the remaining amount in full as a lump sum or carry on the existing payment arrangements.

These reimbursements must be reported on the GMAS at licence renewal but do not count towards the annual limit of 16% of GMP.

# Implementation

## Venue agreements

Societies will need to amend their venue agreement to remove the venue cost schedules and replace them with details of the agreed payments under the regulations. This could include the actual commission rate, how often and on what day payments will be made, and how any reconciliation payments (to manage the annual limit of 16% net GMP) will be dealt with.

You do not need to change all your venue agreements immediately. The transitional provisions in the Gambling Amendment Act (No 2) 2015 provide that venue agreements that are in force as at 3 October are deemed to be amended to be consistent with the regulations. However, the Department expects that societies will agree new venue agreements with their venues within a reasonable timeframe. The actual timeframe to complete new venue agreements will vary depending on the circumstances of each society.

The regulations provide that societies can agree with venues matters such as how often they make payments, the actual commission rate, or whether they make payments at all. These arrangements should be included in the venue agreements.

## Calculating the weekly payments

The weekly EMS reports will include a calculation for each venue of 1.28% turnover for the week and the same calculation + GST. This will give you the maximum payment that a venue could receive for the week.

EMS cannot calculate 16% net GMP on a rolling year to date basis but the weekly report will include a calculation of 16% net GMP for the week as some societies have told us that would be helpful.

If you are paying 1.28% the EMS report will give you the payment amount exclusive and inclusive of GST.

To calculate a weekly commission payment for a venue using a different commission rate:

* Take the weekly turnover from EMS
* Calculate the weekly payment according to the agreed commission rate
* Add GST to the calculated weekly payment – this is what is paid to the venue
* Record the GST exclusive payment amount – this is what is reported to the Department at the end of the financial year.

### Missing data from weekly report

From time to time the weekly report may not include data for all seven days, for example because the site controller has been unavailable for some reason. In that situation we suggest you pay the venue based on the partial week’s turnover as reported by EMS and make up the payment the following week when the missing data will be included in the weekly report.

For example:

In week one a site controller is accidentally unplugged and the weekly report only reports turnover for five days. In week two the weekly report contains data for nine days (two days from week one and the full seven days of week two).

In week one calculate the commission payment using the five days of turnover as reported.

In week two calculate the commission payment using the nine days of turnover as reported.

Once the payment is made for week two, the correct commission will have been paid to the venue for the two weeks.

## Managing the two limits

The regulations set two separate limits:

* A weekly limit of 1.28% of turnover
* An annual limit of 16% of net GMP

Societies must not breach either of the limits.

Note that the limits apply to each venue; they are not across a society’s venues as a whole. A society cannot pay one venue more than 16% of net GMP and make up for it by paying another venue less than 16%. No venue can be paid more than 1.28% of turnover for any week or more than 16% of net GMP in a financial year or part thereof (if the venue commences or leaves during the financial year).

The volatility of both turnover and GMP means that societies will have to actively monitor and manage venue payments to ensure that the limits are not breached. Some suggested approaches to managing the two limits are set out below for information but ultimately societies are responsible for ensuring that they comply with the regulations and each society must decide how best to manage the payments.

Note that venue agreements must include details of how payments will be made. If reconciliation adjustments will be made the venue agreements must include the detail of how this will be done.

### Reconciliation payments

If a venue has been paid less than 1.28% throughout the year, the society can make a final payment at the end of the year to bring the total amount paid up to 1.28% of annual turnover but **only** if that does not take the total amount paid over 16% of net GMP.

If at the end of the year it is discovered that a venue has been paid more than 1.28% of turnover or 16% of net GMP the Department’s expectation is that the society would attempt to recover the overpayment.

### Possible approaches to managing the limits

The following options for managing the limits are provided for information only. Societies are responsible for ensuring that they comply with the regulations and must ensure that any system they use to manage the payment limits is effective.

Societies can make reconciliation adjustments through the year if they wish. This could be by way of making top up payments, recovering overpayments, or reducing weekly payments to bring the year-to-date total into line with 16% of the year-to-date net GMP.

#### Check the total payments against GMP at the end of the financial year

A society could simply do a wash up at the end of the financial year and make any necessary adjustments. Because the check is only done at the end of the year this method carries a risk that a venue could have to pay back a large amount if the payments have exceeded the 16% limit.

#### Monitor payments against GMP on a regular basis

A society may choose to monitor the total payments against 16% of net GMP throughout the year and make reconciliation adjustments as necessary. Societies can choose the timing of the reconciliation by agreement with their venues. For example, reconciliations could be done monthly, quarterly, six-monthly etc.

More frequent reconciliations will allow societies to track any potential overpayments at an earlier stage meaning that any adjustments to payments will be smaller than if an annual reconciliation is performed. The Department recommends that societies monitor the total payments (excluding GST) against the year-to-date net GMP on a regular basis throughout the financial year.

#### Calculate turnover and GMP each week and pay the lower amount

A society may choose to calculate 1.28% of turnover and 16% of net GMP each week and pay the lower of the two amounts. This would guarantee that neither limit is breached at the end of the year. However, the society would have to consider what to do if GMP is negative in any week.

#### Pay less than 1.28% of turnover throughout the year

A venue and society could agree to a weekly payment of less than 1.28% with a final top up payment at the end of the year. The top up payment could bring the total payments up to **either** 1.28% of annual turnover **or** 16% of net GMP, whichever is lower.

## Venue transfers and closures

When a venue transfers to a new society part way through a financial year, each society is responsible for ensuring that it has not paid more than 16% net GMP for the period in which the venue was with that society.

For example:

* Venue 1 is with Society A for the period 3 October 2016 – 3 January 2017. It then transfers to Society B from 1 February 2017.
* Society A’s financial year is 1 April – 31 March
* Society B’s financial year is 1 July – 30 June



Society A must make sure that the payments it has made to the venue between 3 October 2016 and 3 January 2017 do not exceed 16% net GMP for that period.

Society A must provide the total amount paid to the venue on the venue surrender form.

Society B must make sure that the total payments to the venue for the period from 1 February 2017 to 30 June 2017 do not exceed 16% net GMP for that period.

Society B provides the total amount paid to Venue 1 for the period 1 February 2017 – 30 June 2017 on the GMAS form when it renews its licence.

If a venue closes part way through a society’s financial year, the society must make sure that the total payments to the venue do not exceed 16% net GMP for the period the venue was operating.

## Depreciation and write-offs

The regulations have no impact on the treatment of non-cash expenses such as depreciation or other write-offs.

The regulations do not prevent the write-off of GMP in circumstances where the Department has approved an application to waive the requirement to bank GMP due to exceptional circumstances.

Societies are reminded that the Department must approve any request to waive the requirement to bank GMP. The Department will only approve such a request in exceptional circumstances as set out in our publication [*Guide: Treatment of Class 4 gambling profits where exceptional circumstances have prevented its banking*](https://www.dia.govt.nz/diawebsite.nsf/Files/Gambling-guide-to-loss-of-GMP/%24file/Gambling-Guide-to-loss-of-GMP-in-exceptional-circumstances_14-April-2016.pdf)*.*

# Reporting requirements

The Department will check compliance with the regulations as part of the licence renewal process. Societies will be required to attach to the GMAS form a list of the total amount paid to each venue for the financial year. The Department will check the annual totals for compliance with the two limits of 16% net GMP and 1.28% turnover (annualised).

Societies do not have to report each weekly payment but must keep records of every payment and provide details of the individual payments to the Department on request.

The regulations provide that if a society has had to manually calculate turnover for a particular week (e.g. because of an EMS fault), the society must keep a record of the method of calculation and the sum calculated and keep the records available for inspection by the Department.

## Reporting - changes to GMAS

The Department will obtain information on venue payments by way of the GMAS form when societies renew their licences. Most societies will have a mix of commission payments and venue cost schedule payments in the first reporting round after 3 October and the GMAS form has been amended to account for this.

|  |  |
| --- | --- |
| If | Then  |
| You are reporting on a financial year that ended on or before 2 October 2016 | Use the current form GC6 |
| You are reporting on a financial year that includes any days up to and including 2 October 2016 **and** any days on or after 3 October 2016 | Use the new form GC6 – Transition year. This will be available on the Department’s website from 3 October 2016. |

## First year arrangements

The first round of GMAS reports after 3 October 2016 may include payments made under the venue cost schedules and commission payments. A new form *GMAS (GC6) Transition Year* has been developed and will be available on the Department’s website from 3 October.

Societies must provide the total amounts paid under the venue costs schedules, the new regulations, and any DEM reimbursements made after 3 October.

The venue costs section of the transition form will ask for the following information.

* Venue payments made up to and including 2 October 2016
* Venue payments made from 3 October 2016 in accordance with the Gambling (Venue Payments) Regulations 2016 (**excluding** approved DEM cost reimbursements)
* Payments made after 2 October 2016 to reimburse DEM costs incurred by venue operators and approved for payment by the Department before 3 October 2016

All totals are GST exclusive

Societies must attach to the GMAS a list of the total amount paid (excluding GST) to each venue for the financial year. The Department does not require a list of individual weekly payments but societies must keep records of the individual weekly payments for each venue and make them available on request by the Department.

## Reporting a full-year of commission-based payments

A new form GMAS GC6 will be developed for use when societies are reporting on a full year of commission-based payments. We will advise the sector when that form is available. Note that it will not be used before 3 October 2017.

Societies will attach to the GMAS form a list of the total amount paid (excluding GST) to each venue for the financial year. The Department will compare the total amount paid to the two limits of 16% net GMP and 1.28% turnover (annualised) for each venue.

## Reporting at venue transfer or closure

When a venue transfers to another society part way through the financial year the society that completes the surrender form must provide the total amount paid to the venue for the period of the financial year that the venue was with that society.

The form *GC4A – Class 4 venue licence – amendments & non-key person notifications* has been amended to include information about venue payments as part of the surrender notice. The amended form will be available on the Department’s website from 3 October 2016.

For example:

* A venue transfers from society A to society B on 30 November
* Society A’s financial year is 1 July to 30 June
* Society A must include on the surrender form the total amount paid for the period 1 July to 30 November

If a venue is closing, the society must provide the total amount paid to the venue for the period of the financial year that the venue was operating.

For example:

* The venue above ceases operating on 30 November
* Society A must provide the total amount paid for the period 1 July to 30 November.

# Appendix One - Overview of regulations

**R1-4** - preliminary provisions.

**R2** provides that the regulations come into force at 2am on 3 October 2016. The commencement time has been set to coincide with the weekly banking calculations and EMS requirements.

**R5** provides that societies may only pay venues in accordance with the regulations. No other payments are permitted. Societies and venues can agree between themselves matters such as whether payments are made, and the amount (up to the maximum of 1.28% of weekly turnover), time and frequency of payments. You would normally do this by way of your venue agreements.

**R6** provides that a society must not pay a venue more than 1.28% of weekly turnover for any given week. Weekly turnover is as reported by EMS. If EMS is unavailable or is unreliable because of a fault, a society may calculate turnover using another reliable method. If you do this you must keep a record of the calculation.

**R7** provides that a society must not pay a venue more than 16% of net GMP in a financial year. This cap is in addition to the weekly cap of 1.28% of turnover. Note that the regulations refer to “turnover (exclusive of prizes and GST)” this is the same as net GMP.

Note that the 16% cap is per venue, it does not apply across all of the society’s venues as it does now. No venue can receive more than 16% of net GMP in any financial year.

**R8** applies to situations where a venue leaves a society part way through a financial year (e.g. it transfers to another society or closes down). In these situations, a society must not pay more than 16% of net GMP for the period of that financial year that the venue was with the society.

**R9** provides that venue managers are required to bank all gaming machine profits in accordance with the Act and regulations. The new payment system does not impact on the current banking practice, i.e. venues must not deduct the amount of their weekly payment before banking the rest.

The transitional provision makes it clear that any costs incurred under a venue costs schedule before the commencement of the new system may be reimbursed despite the new regulations. This means that if a venue has incurred costs under its venue costs schedule in the week before 3 October, but they have not yet been reimbursed, they can still be paid even though the new system has come into effect.

# Additional information

The following links take you to additional information:

* [Venue payment information on the Department’s website](https://www.dia.govt.nz/diawebsite.nsf/wpg_URL/Services-Casino-and-Non-Casino-Gaming-Venue-Payments-System?OpenDocument)
* [Gambling (Venue Payments) Regulations 2016](http://www.legislation.govt.nz/regulation/public/2016/0191/latest/DLM6917617.html?src=qs)
* [Guide: treatment of Class 4 gambling profits where exceptional circumstances have prevented its banking](https://www.dia.govt.nz/Services-Casino-and-Non-Casino-Gaming-Gambling-in-Pubs-and-Clubs-%28Class-4%29#treatment)
* [Gambling (Venue Payments) Regulations 2016](http://www.legislation.govt.nz/regulation/public/2016/0191/latest/DLM6917617.html?src=qs)