

To : **The stakeholders in the Manx online gambling sector**
From : **Mark Rutherford, Gambling Supervision Commission**
Date : **20th April 2016**
Subject : **Gambling Regulations package 2016**

Purpose of the document

The Gambling Supervision Commission (GSC) is running a limited consultation on a number of proposed secondary legislative changes. The board of the GSC and the Isle of Man Treasury have approved the changes which are referred to as the Gambling Regulation Package 2016.

The consultation will remain open for four weeks, closing on Friday 20th May 2016.

The GSC would be grateful for any comments on the proposals by e-mail before this date. The e-mail address is Mark.Rutherford@gov.im

It will be helpful if respondents can prefix their e-mail title with "Consultation response" or something similar.

It is possible that respondents' comments will be published so if a respondent wishes to not be attributed to a comment, it should be made clear in the response.

The proposed changes

Six changes are proposed. They are:

- Change to regulations to allow virtual currencies to be accepted as if they were cash;
- Expansion of services that a sub-licensee can take from a full licensee;
- Ability of GSC to unilaterally accept test certificates issued by another authority;
- Expansion of voluntary gambling controls that an operator can offer players;
- Clarification of protection required for winnings that the Commission deems to be out of scope for protection;
- Ability to offset unused portions of licence fees against new licences.

It should be noted that while the suggested changes to legislation in this document are designed to meet the GSC's policy objectives, the precise legislative changes remain subject to the approval of the Government's drafters although any deviation will only be in approach and wording; the GSC's policy and intentions will remain unchanged.

The changes in detail

1.Virtual currencies

In summary:

A change that will allow Isle of Man licensees to open accounts for players who use convertible virtual currencies (CVCs).

The Registration and Accounts Regulations 2008 (SD283/08) contain the following provision in the schedule that relates to regulation 4 (rules as to accounts):

1 . An account may not be opened except by means of a deposit of money –

(a) by credit or debit card, or

(b) by such other means as may be approved by the Commissioners.

In 2014, when considering the requirements that would apply to crypto-currencies, it was indicated by the DED that crypto-currencies would probably be classified as property rather than currency.

It is the policy of the GSC that an operator be allowed to accept convertible virtual currencies (CVCs), subject to regulatory safeguards on the protection of value and the security of the way value is stored. The GSC also requires that an operator's CVC exchange must have a reporting requirement to a credible financial intelligence unit.

The GSC proposes that in the phrase "a deposit of money", the words "deposit of money" will be considered for the purposes of online gambling to include "*a deposit of money or the deposit of something which has a value in money or money's worth* " where the format of the money's worth will still require the Commission's specific approval.

The GSC intends to seek the guidance on the most appropriate way to frame this requirement in law.

2. Broader services available to sub-licensees from full licensees

In summary:

A change that will clarify that sub-licensees can use all parts of a full licensee's platform, not just games.

:: Background

Gambling companies operate a number of functions. One function is the provision of games, betting platforms, lotteries, etc. However, another function is the ability to capture and process payment details, categorise AML/CFT risk and capture data for commercial marketing purposes. These latter non-gaming functions are typically known as "the back office" and are often more sophisticated and extensive than the games they support.

The GSC has been approached by an Island based CSP to see if it would be prepared to licence a model in which a licensee supplies a back office to entrepreneurs who wish to concentrate on marketing and games only. The GSC is content with the proposed model but notes that when the law was originally framed, it only anticipated games being supplied.

It should be noted that the proposed model is designed to appeal to smaller start-up operations by leveraging the sub-licence model (in which the annual OGRA fee is reduced by £30,000 to £5,000 in exchange for the sub- licensee forging an exclusive business partnership with the full licensee.)

:: The change in detail

The Online Gambling (Licence Fees) Regulations 2009 (SD257/09) contain the following definition of sub- licensee:

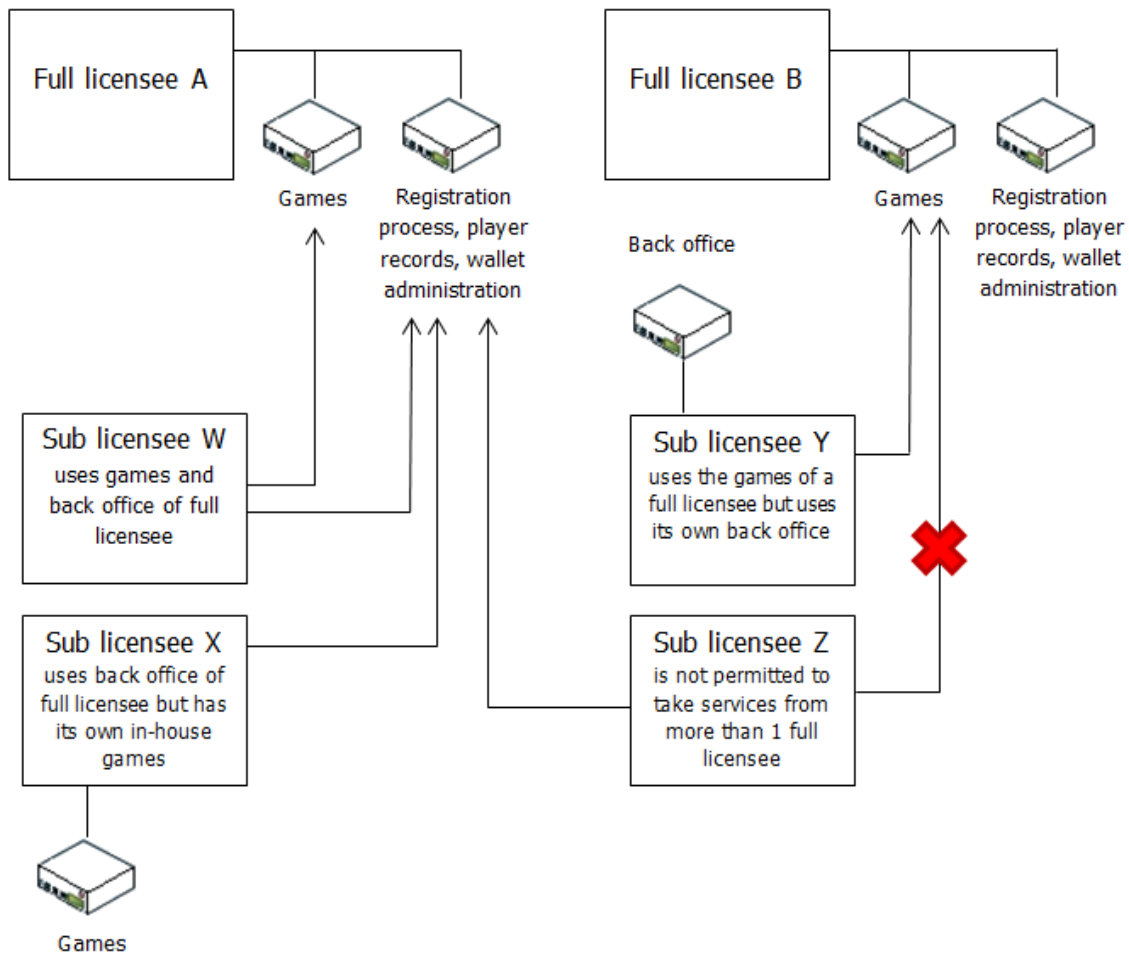
1.(3) "sub-licence" means a licence subject to a condition that the holder shall conduct no online gambling other than a game or lottery operated by the holder of a full licence.

While the distinction between games and back offices is rarely clear cut in today's technological environment, the law as it is currently framed could be seen to exclude the use of any parts of a full licensee's platform except specific games.

It is therefore the intention of the GSC to broaden the services that a full licensee can offer a sub- licensee. The change will allow a full licensee to offer back office services, as well as the more traditional games and lotteries. Betting and live dealing would also be included as a type of service a full licensee can offer a sub- licensee.

The exclusivity for platform and/or games is to remain, with the qualification for a sub- licence remaining that there is one relationship only between the sub- licensee and a full licensee, irrespective of how many services are supplied. As soon as the sub- licensee obtains games and/or back office services from a second provider, the relationship with the first must be terminated or the licensee upgraded to a full licence.

An example of a sub-licensee using other expanded services is given below:



While a full licensee may wish to bundle licensable and un-licensable services together for the convenience of sub-licensees, the GSC is only seeking to change the law in respect of the licensable activity. Full licensees will be able to offer additional, non-licensable services as they see fit.

:: The proposed change

At present:

"sub-licence" means a licence subject to a condition that the holder shall conduct no online gambling other than a game or lottery operated by the holder of a full licence.

Proposed:

"sub-licence" means a licence subject to a condition that the holder shall conduct online gambling by

- using its own licensable services and the licensable services operated by a single holder of a full licence; or*
- the licensable services operated by a single holder of a full licence (including a licence for network services).*

"licensable services" means any service which, if it were operated in the Isle of Man would require an online gambling licence to be obtained. It includes games, betting, lotteries as well as services which enrol players, host their accounts and offer other functionality as required by regulation.

3. Test certificates

In summary:

A change that will allow the GSC to make a list of jurisdictions and transnational organisations from whom it will recognise test certificates as equal to Isle of Man certificates.

When gambling is offered to the public online, the fairness of the games is verified by approved testing laboratories who simulate play and ensure that pay-outs and randomness are aligned with regulations. Once satisfied with a game, the test lab issues a certificate which is given to the regulator as a way of indicating the game's conformity.

Many jurisdictions require test certificates. The standards required in order to obtain a certificate vary widely. Some are weaker than the standards in the Isle of Man but many are equivalent, or more detailed.

The Online Gambling (Systems Verification)(No.2) Regulations 2007 (SD731/07) contain the following restrictions on the acceptance of a test certificate:

2. Certification of System for Gaming and Lotteries

(1) Subject to the terms of these Regulations, the Operator shall, before any gaming or a Lottery is conducted by a Participant by means of any System' produce to the Commissioners a certificate in writing issued by a party approved for the purpose by the Commissioners (or previously approved by the Department of Home Affairs) that the System by means of which such Gaming or Lottery is conducted complies with the standards specified in Schedule 1.

This regulation has the effect of making it difficult to accept the certificates issued to the gambling authorities in other territories, even if the Gambling Supervision Commission deems those standards to be as good as, or better than those required by the Isle of Man.

The GSC now wishes to be able to accept certificates issued by approved testing laboratories in respect of non-Isle of Man standards or in respect of any transnational standards that emerge, such as those cited by the IAGR multi-jurisdictional testing framework.

If it is agreed with the legislative drafters that the list of acceptable test standards can be maintained administratively (on the website for example rather than as a schedule in regulations or orders) then the following change will be considered:

At present : *2. Certification of System for Gaming and Lotteries*

(1) Subject to the terms of these Regulations, the Operator shall, before any gaming or a Lottery is conducted by a Participant by means of any System' produce to the Commissioners a certificate in writing issued by a party approved for the purpose by the Commissioners (or previously approved by the Department of Home Affairs) that the System by means of which such Gaming or Lottery is conducted complies with the standards specified in Schedule 1

Proposed : 2. *Certification of System for Gaming and Lotteries*

- (1) *Subject to the terms of these Regulations, the Operator shall, before any gaming or a Lottery is conducted by a Participant by means of any System' produce to the Commissioners a certificate in writing issued by a party approved for the purpose by the Commissioners (or previously approved by the Department of Home Affairs) that the System by means of which such Gaming or Lottery is conducted complies with the standards specified in Schedule 1 or the standards published by another gambling regulator, international body of gambling regulators or supra-national body if those standards have been approved by the Gambling Supervision Commission.*

4.A wider choice of elective controls for gamblers

In summary:

Operators provide controls to allow players to voluntarily control their gambling. This change broadens the types of controls that can be offered to players.

Gamblers are given the opportunity under Isle of Man law to control their gambling voluntarily.

Operators make functions available in accordance with regulation 5 of the Online Gambling Registration and Accounts Regulations 2008 (SD283/08), which states:

2. (1) The Operator must provide the Player with one of the following options for setting his maximum stakes or bets -

(a) a maximum stake or bet, or maximum total stakes or bets, per session, or

(b) a maximum total stakes or bets in any period (not being less than 7 days).

(2) A Player shall not be permitted to increase any such maximum except after 7 days' notice.

The player can choose to engage with a control at any time. Once set, the control is subject to a cooling-off period during which the control cannot be reversed. The controls that are currently made available allow a player to control the following:

- The maximum stake or bet that can be placed during a session (e.g. "*do not allow me to bet more than £10 each time on this slot machine*");
- The maximum of all stakes and bets during a period of 7 days or more (e.g. "*do not allow me to place bets in excess of £300 this month*").

Stake and bet limits are not very often used by players. The controls are problematic in the following ways:

- Setting a stake limit does not control the length of play. A session is considered to be the period that elapses between a player entering a password and signing off after play. Sign off is at the player's discretion. A player who has £300 to spend on gambling and who doesn't wish to gamble more can set his stake limit at £10 but then play indefinitely until they have lost (for example) £800 (albeit in £10 segments);
- Setting a cap on stakes and bets for a period is difficult because it effectively sets a cap on the total amount of gameplay, which can be difficult to predict. For example, a player with £300 to spend on gambling will want to maximise the amount of time they spend enjoying the gambling without exceeding the £300 budget they have set. If such a player sets a £300 cap on total stakes in the coming week, they may win £500 in prizes and wish to extend play by recycling the winnings. The £300 cap means that as soon as winnings accumulate, they cannot be re-played if by doing so

the cap is reached, even if the player wishes to play until a large jackpot is won or the original budget is spent and further gambling is prevented.

A common mechanism in the gambling industry to allow players to manage their gambling in a more controllable way is to allow the system to cap how much money is deposited in a given time frame. A deposit limit which remains in effect for the period specified allows a player to budget money for gambling without losing out on gameplay or exceeding their budget.

As research into problem gambling progresses, it is possible academics will identify other mechanisms which are effective in allowing gamblers to control their gambling to prevent it becoming problematic.

It is therefore proposed that the legislation be broadened to allow the introduction of more effective functionality.

At present:

2. (1) *The Operator must provide the Player with one of the following options for setting his maximum stakes or bets -*
- (a) a maximum stake or bet, or maximum total stakes or bets, per session, or*
 - (b) a maximum total stakes or bets in any period (not being less than 7 days).*

Proposed:

2. (1) *The Operator must provide the Player with one or more effective mechanisms for allowing the characteristics of gambling to be controlled by either –*
- (a) setting a maximum stake or bet per session;*
 - (b) setting a maximum total stakes or bets in a period not less than 7 days;*
 - (c) setting a maximum amount that can be deposited into a gambling account within a period;*
 - (d) setting a maximum amount that can be committed from an account to gambling within a period;*
 - (e) setting a restriction on when play can or cannot occur;*
 - (f) setting a restriction on the length of time that can be played for a given session or within a specified time frame; or*
 - (g) other factors that have been approved by the Gambling Supervision Commission as ways for gamblers to voluntarily control gambling behaviour.*

5. Clarification on protection of winnings

In summary: The fund protection law of the Isle of Man is problematic for some gambling models. This change allows the Commission to specify case by case protection that is more suitable for these models.

The Online Gambling (Participants' Money) Regulations 2010 (SD832/10) oblige operators to protect the funds of gamblers.

The models used by gambling licensees vary enormously and the Commission sometimes concludes that the generic protection obligation mandated by law is inappropriate or unenforceable and should not be applied to a specific scenario. However in some cases the regulations remove the Commission's discretion and force fund protection in inappropriate scenarios.

The Commission wishes to be the final arbiter of the levels of protection afforded to players and wishes to be able to occasionally redefine the nature of the protection to be supplied and specify conditions applying to that protection or as necessary for the concession to apply.

The Commission therefore wishes to change the law to allow exceptions to be specified in the licence conditions of an operator.

At present:

Regulation 3

"participants' money" means money which for the purpose or in the course of online gambling, an operator -

(a) holds or receives on behalf of a participant or

(b) owes to a participant,

and includes deposits, winnings, transfers, gratuities and redeemed bonuses;

Proposed:

Regulation 3

"Participants' money" means the definition supplied to the licensee by the Commission in its licence conditions.

If the Commission does not specifically supply a definition of "participants' money" in the licensee's licence conditions, then "participants' money" means:-

(a) money which for the purpose or in the course of online gambling, an operator –

(i) holds or receives on behalf of a participant or

(ii) owes to a participant,

and includes deposits, winnings, transfers, gratuities and redeemed bonuses.

If the definition of "participants' money" is specifically supplied by the Commission then the Commission may specify additional conditions which, if not adhered to, cause the meaning of participants' money to revert to the meaning in (a)

6. Ability to offset unused amount of licence fee when upgrading and downgrading licence types

In summary:

Operators sometimes wish to upgrade to more expensive licence types. The inability of the GSC to refund the unused portion of the previous licence type acts as a disincentive and constrains business.

This change removes that disincentive by allowing unused licence fees to be offset against the upgrade costs. The change also grants a credit for a downgraded licence which can be offset against future licence fees.

When a licensee obtains a £35,000 licence and then wishes to upgrade to offer network services (the network licence costs £50,000 per year), the policy of the GSC is that a new licence (the network services licence) is issued and the old licence is rescinded. No portion of the rescinded licence is refunded and no offset of unused fee is offered. This is based on the GSC's understanding that OGRA has no provision for the refund of unused licence fees, a position confirmed with the GSC's legal advisors.

The GSC has determined that it wishes to change the law in respect of fees so that an upgrading licensee can offset its existing unused licence fee against the cost of a new one.

The inability to refund also affects operator decisions to upgrade which, in order to be cost-efficient, are obliged to coincide with licence fee renewal dates. This places a constraint on business because business decisions can only be efficient at certain times which may not coincide with business reality. For example, an operator which suddenly acquires expressions of interest will likely not be able to ask its prospective partners to wait for ten months until it can change licence type in a cost effective way.

It is proposed that the invoice for an upgrade will use the current formula:

$$\text{Invoice} = \frac{\text{Target licence fee} \times \text{days left}}{365} \text{ minus } \frac{\text{Old licence fee} \times \text{days unused}}{365}$$

An example of the proposed upgrade offset.

On January 1st a licensee is granted a £35,000 licence.

On March 1st, after two month's use of the licence, an upgrade to a £50,000 licence is requested. The invoice is calculated:

$$\begin{aligned} \text{Invoice} &= (\text{£50,000} \times 305/365) - (\text{£35,000} \times 305/365) \\ &= \text{£41,780} - \text{£29,246} \\ &= \text{£12,534} \end{aligned}$$

The total received by the GSC for the year : £35,000 + £12,534 = £47,534

The driver for this reform is fairness and the GSC considers that fees from unused periods of licences should be offset against costs whether the change arises from an upgrade or a downgrade.

For this reason, it is possible for the calculation to create a credit.

However the GSC will not always be in a position to issue a refund at the time such a credit is created. It is therefore proposed that any credit will not be refunded at the time it is created but instead that the credit will be deferred and used against future invoices until fully consumed.

A licensee that ceases will not be able to utilise a deferred credit. It is intended to make the credit void when a licence is surrendered or cancelled.

Appendix A shows a more complex scenario where a licensee upgrades and downgrades during a year. The scenario includes a deferred credit.

At present:

No legislation

Proposed:

A new order made under OGRA 5(2A) which specifies that:

Any change of licence type before the annual payment shall be subject to an offset of the unused part of the old licence, calculated using the formula supplied (see above) and where any value produced by the formula less than zero to be considered as a credit which may be applied against any future licence fees only.

Appendix A – an example of the proposed offset calculation where an operator upgrades and downgrades in the same year.

This example shows the formula used for upgrades and downgrades of the licence where both types of change occur in the same year. The scenarios show that downgrades do not negatively affect revenue when compared against two years of standard fees (£70,000).

$$\text{Invoice} = \frac{\text{Target licence fee} \times \text{days left}}{365} \text{ minus } \frac{\text{Old licence fee} \times \text{days unused}}{365}$$

Scenario 1 : A licensee obtains a standard OGRA licence on 1st January. On 1st March the licensee requests an upgrade to the £50,000 network licence. On 1st September the operator requests a downgrade to the standard licence.

Invoice for the January 1st licence:
£35,000

Invoice for the March 1st upgrade:
 Invoice = (£50,000 x 305/365) - (£35,000 x 305/365)
 = £41,780 - £29,246
 = **£12,534**

Invoice for the September 1st downgrade:
 Invoice = (£35,000 x 121/365) - (£50,000 x 121/365)
 = £11,602 - £16,575
 = **-£4,973**, carried forward to Jan 1st as an offset against the next fee

Invoice for the January 1st annual licence payment
 Invoice = target fee - deferred credit
 = £35,000 - £4,973
 = **£30,027**

Fees paid over 2 years : £35,000 + £12,534 + £30,027 = £77,561

Scenario 2 : As scenario 1 except the subsequent downgrade date is April (a much shorter period of higher value fee and therefore a larger credit against following year).

Invoice for the January 1st licence:
£35,000

Invoice for the March 1st upgrade:
 Invoice = (£50,000 x 305/365) - (£35,000 x 305/365)
 = £41,780 - £29,246
 = **£12,534**

Invoice for the April 1st downgrade:
 Invoice = (£35,000 x 275/365) - (£50,000 x 275/365)
 = £26,396 - £37,671
 = **-£11,275**, carried forward to Jan 1st as an offset against the next fee

Invoice for the January 1st annual licence payment
 Invoice = target fee - deferred credit
 = £35,000 - £11,275
 = **£23,725**

Fees paid over 2 years : £35,000 + £12,534 + £23,725 = £71,259