



THE ONLINE GAMBLING REGULATION ACT 2001

THE ONLINE GAMBLING (DISASTER RECOVERY) (No. 2) REGULATIONS

2007

Laid before Tynwald 16th October 2007

Coming into operation 31 August 2007

In exercise of the powers conferred on the Department of Home Affairs by sections 3 (1)(f), 3(2), 21(1)(a) and 21(1)(i) of the Online Gambling Regulation Act 2001¹, and of all other enabling powers, the following Regulations are hereby made:-

1. Citation, Commencement and Interpretation

(1) These Regulations may be cited as the Online Gambling (Disaster Recovery) (No. 2) Regulations 2007 and shall come into operation on 31 August 2007.

(2) In these Regulations:-

“Act” means the Online Gambling Regulation Act 2001, as amended;

¹ 2001 c.10

“Affiliate”	means any subsidiary or holding company of a company and any subsidiary of any such holding company;
“Commissioners”	means the same as defined in the Act;
“Department”	means the Treasury;
“Disaster”	means any unplanned event beyond the reasonable control of an Overseas Operator, which results in the Overseas Operator’s Site or any part thereof not being available to the public, but excluding:- <ul style="list-style-type: none"> (i) periods of delay ordinarily experienced by the public in accessing the relevant Site; (ii) any change and/or passing of laws applicable to or affecting the Overseas Operator; (iii) any direction and/or requirement of an Overseas Regulator applicable to or affecting the Overseas Operator;
“Disaster Period”	means the period of a Disaster during which an Overseas Operator’s site operates live using the Disaster Recovery Services provided by a Disaster Recovery Provider;
“Disaster Recovery Provider”	means a party, incorporated in the Isle of

Man, on the list held by the Commissioners pursuant to paragraph 4 of these Regulations and therefore entitled under these Regulations to provide Disaster Recovery Services;

“Disaster Recovery Services”

means the provision of such Disaster Recovery Facilities, hosting and associated technical services that may be required to wholly or partially host a Site in the event of a Disaster;

“Disaster Recovery Facilities”

means such hardware, software, telecommunication or other facilities located in the Isle of Man required to provide Disaster Recovery Services;

“Disaster Recovery Premises”

means the premises in the Isle of Man from where Disaster Recovery Services are provided;

“Online Gambling”

means the same as defined under the Act;

“Online Services”

means online gambling and/or online gaming and/or an online lottery which is the same or similar to Online Gambling;

“Overseas Operator”

means a party not incorporated in or having a place of business in the Isle of Man and which is licensed in a jurisdiction other than the Isle of Man to provide Online Services;

“Overseas Regulator”	means a party outside of the Isle of Man regulating the Overseas Operator in respect of the Overseas Operator’s provision of Online Services;
“Potential Disaster Recovery Provider”	means a party that wishes to provide Disaster Recovery Services but that is not on the list held by the Commissioners as detailed in paragraph 4 of these Regulations;
“Site”	means an Internet website that provides, inter alia, Online Services.

2. Provision of Regulations

- (1) These Regulations are made pursuant to section 3(1)(f) of the Act and the activity prescribed under that section is the provision of Disaster Recovery Services in the Isle of Man.

3. Disaster Recovery Services

- (1) Subject to the terms of these Regulations, Disaster Recovery Providers shall be entitled to provide Disaster Recovery Services to Overseas Operators, provided that the conditions of these Regulations are met.
- (2) The Disaster Recovery Services must be rendered to the Overseas Operator exclusively by the Disaster Recovery Provider listed as detailed in paragraph 4 notwithstanding that part or parts of the Disaster Recovery Facilities may be maintained, supplied or supported by third parties as agents or suppliers of the Disaster Recovery Provider. For the avoidance of doubt, the Disaster Recovery Provider retains full liability for the Disaster Recovery Services.
- (3) The provision of Disaster Recovery Services to any Overseas Operator in the Isle

of Man shall not entitled the Overseas Operator to advertise its Online Services in any jurisdiction, unless the Overseas Operator is entitled to do such notwithstanding the provision of Disaster Recovery Services from the Isle of Man.

4. **List of Disaster Recovery Providers**

- (1) The Commissioners shall keep a list of Disaster Recovery Providers as provided in this paragraph 4.
- (2) Prior to providing any Disaster Recovery Services to an Overseas Operator, a Potential Disaster Recovery Provider wishing to provide Disaster Recovery Services shall require to be on the list detailed in paragraph 4(1).
- (3) The Commissioners shall not accredit any Potential Disaster Recovery Provider as a Disaster Recovery Provider but any Potential Disaster Recovery Provider wishing to provide Disaster Recovery Services shall require to be on the list detailed in paragraph 4(1).
- (4) On submitting its name to be included on the list detailed in paragraph 4(1), a Potential Disaster Recovery Provider shall provide to the Commissioners the payment of £5,000 together with such other information regarding the Potential Disaster Recovery Provider and the Disaster Recovery Premises as may reasonably be required by the Commissioners.
- (5) Once the Commissioners have such information as they may reasonably require under paragraph 4(4), the Commissioners shall add the name of the relevant Potential Disaster Recovery Provider to the Commissioner's list of Disaster Recovery Providers detailed in paragraph 4(1) and shall confirm in writing to the relevant Disaster Recovery Provider that its name has been added to the said list.
- (6) Once a Potential Disaster Recovery Provider has been added to the list held by the Commissioners as provided in this paragraph 4, it shall for a period of twelve months thereafter be a Disaster Recovery Provider.

- (7) A Disaster Recovery Provider shall be required to pay to the Commissioners a sum of £5,000 on each anniversary of its appointment as a Disaster Recovery Provider to enable it to remain a Disaster Recovery Provider.
- (8) In the event that a Disaster Recovery Provider is found guilty of an offence under these Regulations, the same shall be grounds for denying the relevant Disaster Recovery Provider with access to the list detailed in paragraph 4 and shall result in the relevant Disaster Recovery Provider not being entitled to provide Disaster Recovery Services to Overseas Operators.

5. **Requirements of Disaster Recovery Providers**

- (1) Prior to providing any Disaster Recovery Services to an Overseas Operator, the Disaster Recovery Provider shall inform the Commissioners in writing of the names of any Overseas Operator that it has entered into any commercial arrangements with regarding the provision of Disaster Recovery Services, together with the registered number (if any) of such Overseas Operator, a copy of such Overseas Operator's licence from its Overseas Regulator, the relevant Overseas Operator's place of incorporation and such other reasonable information as may be required by the Commissioners regarding the Overseas Operator.
- (2) No Disaster Recovery Provider shall be entitled to provide Disaster Recovery Services to an Affiliate that is an Overseas Operator without the prior written consent of the Commissioners, which consent shall be at the sole discretion of the Commissioners.
- (3) The Commissioners shall be entitled to inspect any Disaster Recovery Premises or part thereof, on giving twenty four hours' notice to the relevant Disaster Recovery Provider. In this event, the Disaster Recovery Provider shall allow the Commissioners full and free access to its Disaster Recovery Premises. The Disaster Recovery Provider shall be entitled to escort the Commissioners during such.

6. Use of Disaster Recovery Facilities and Provision of Disaster Recovery Services

- (1) A Disaster Recovery Provider shall be entitled to provide Disaster Recovery Services to the Overseas Operator to allow the Overseas Operator's Site to remain live during the period of a Disaster, provided that the following terms of this paragraph 6 are met: -
 - (a) the Disaster Period or any Disaster Periods, do not exceed thirty days in aggregate in any twenty four month period;
 - (b) subject to terms of the paragraph 6(1)(a) above, an additional thirty days aggregate period in any twenty four months may be granted subject to the approval of the Commissioners and thereafter, an additional thirty day aggregate period in any twenty four month period subject to the approval of the Department.
- (2) In the event that the Commissioners are of the opinion that the Overseas Operator is, during Disaster Period affecting such Overseas Operator, acting in such a way as to bring the reputation of the Isle of Man into disrepute, the Commissioners shall require the Disaster Recovery Provider to terminate the provision of the Disaster Recovery Services to the Overseas Operator within five days of being required in writing by the Commissioners so to do.
- (3) The Overseas Operator shall at all times during a Disaster Period, indicate on its Site that although it may obtain certain services from a Disaster Recovery Provider, it remains at all times regulated by its Overseas Regulator.

7. Role of Disaster Recovery Provider

- (1) A Disaster Recovery Provider shall inform the Commissioners in writing forthwith in the event that the Overseas Operator's Site is operating live from the Disaster Recovery Facilities and will update the Commissioners as to the duration and cessation of any and all Disaster Periods.
- (2) During any and all Disaster Periods, the Disaster Recovery Provider shall provide

to the Commissioners all information regarding the same as the Commissioners may reasonably require.

- (3) At the end of the relevant period or periods noted in paragraph 6(1) of this Regulation, the Disaster Recovery Provider shall forthwith terminate the provision of the Disaster Recovery Services to the Overseas Operator (and confirm the same in writing to the Commissioners) unless the Overseas Operator has applied for a licence under the Act and the Disaster Recovery Provider has obtained the consent of the Commissioners to the continuation of the provision of the Disaster Recovery Services.

8. **Exclusions**

- (1) For the avoidance of doubt, nothing in these Regulations shall be construed to preclude a party licensed under the Act from utilising Disaster Recovery Services in the Isle of Man from a party not on the list detailed in paragraph 4 of these Regulations.

9. **Penalties**

- (1) If any Overseas Operator is in breach of any of these Regulations, the Commissioners may regard such as a grounds for refusal of a licence under the Act.
- (2) If any Disaster Recovery Provider is in breach of any of these Regulations, it shall be guilty of an offence and liable on summary conviction to a fine not exceeding £5,000.

10. **Revocation**

- (1) The Online Gambling (Disaster Recovery) Regulations 2007² are hereby revoked.

² SD 272/07

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Minister for Home Affairs

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations are made under the Online Gambling Regulation Act 2001 and provide for the manner in which those wishing to provide Disaster Recovery Facilities in the Isle of Man to Overseas Operators must operate together with the restrictions that relate to the provision of such services. These Regulations revoke the Online Gambling (Disaster Recovery) Regulations 2007.