

Treasury
Customs and Excise Division

Gambling Duties Bill
Consultation Document



April 2008



Isle of Man
Government

Reilts Ellan Vannin

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INTRODUCTION

The Treasury proposes to bring forward a Bill to update and simplify the law concerned with the administration of gambling duties, providing assurance as to the compliance of licensed operators, combating unlicensed and unlawful gambling and associated matters.

The Bill would repeal and replace –

- the Betting Act 1970, which is chiefly concerned with local betting shop operations; and
- the Pool Betting (Isle of Man) Acts 1961-70, which are concerned with pools promoters.

It would also provide for a comprehensive, harmonised excise duty control structure for those operating under the above Acts and the Online Gambling Regulation Act 2001.

The Bill would not be concerned with the National Lottery. Neither will it be intended to deal with the regulatory aspects of the social law governing gambling (such matters as licensing, under-age and problem gambling) nor with any anti-money laundering aspects.

The Bill would make provision for effective and important exchange of information between those bodies in the Island involved with gambling. It will also provide for the Treasury to be able to exchange information with off-Island agencies, to combat any possible criminality in or affecting the gambling industry – and this could involve liaising with sports bodies in order to prevent corruption connected with betting.

Copies of this document will be sent to all licensed gambling operators in the Island, relevant Government Departments and agencies, and to HM Revenue and Customs, HM Treasury, the Department of Culture, Media and Sport and the Gambling Commission in the United Kingdom.

Further copies of the document are available from the Customs and Excise Division –

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Responses to the consultation should also be sent to the above address.

Comments on the proposals contained in this document should be submitted no later **20th June 2008**.

BACKGROUND

The past few years have seen some radical changes taking place affecting the Island's gambling sector. What had been a fairly small industry, concentrating almost entirely on providing services to Island residents with most betting taking place in traditional retail betting "shops", has developed into a multimedia, multinational one. Operators in the Island now have their markets throughout the world, and a framework has developed to supply the essential software, financial and technological support it needs.

Whilst there remains a small number of betting shops, the bulk of business is now done online, and what had been chiefly a betting industry where bookmakers dealt with wagers on horse racing, football and other sports events has developed in a variety of ways, with various forms of gambling offered on a constantly growing range of events, games etc.

The gambling market has become increasingly global. This is despite the prohibitions imposed on online gambling in the USA and the restrictions that remain in a great many other countries.

After something of a false start in 2001 online gambling has developed, initially through expansion of international telephone betting into online bookmaking and *pari-mutuel* betting, so that there is now many companies involved in a broad range of gambling activities – betting, gaming, poker, bingo and so on.

The soundness of the regulatory control of the sector in the Island has been recognised by the UK, which in 2007 made the Island only one of 3 non-EEA territories whose licensed operators are permitted to do business in the UK as if licensed and regulated there.

Gambling is a potentially important source of revenue to the Island, in terms of licence fees and excise duties, as well generating additional banking activity, providing employment and requiring servicing by support industries. The Treasury's Customs and Excise Division is responsible for administering the excise duties on gambling in the Island. These duties have been –

1. pool betting duty – paid by pools promoters, such as those offering traditional football pools;
2. general betting duty – paid on betting, for example on wagers placed with bookmakers; and
3. online gambling duty – paid by online operators licensed under the Online Gambling Regulation Act 2001 (or "OGRA").

The past two years have seen a gradual migration of businesses to licensing under OGRA and payment of online gambling duty. This policy was adopted by the Treasury in conjunction with the Department of Home Affairs and the Gambling Control Commission in an effort to simplify and harmonise the taxation structure.

Most operators offering gambling products liable to duty would now pay online gambling duty. The exceptions would be –

- pools promoters where customers took part by some means other than online; and
- local "walk in" bookmakers' betting shops.

Even then, changes to the structure of general betting duty effected during 2007 mean that the latter pay the same rate of duty as for the equivalent online gambling.

The Customs and Excise Agreement with the UK does not extend to the indirect taxation of gambling operations, except in that –

- pool betting duty collected in the UK and the Island is pooled and shared, with the Island obliged to maintain its law and procedures so that they correspond to those of the UK; and
- the rules on VAT and gambling are the same as in the UK, in that gambling is an “exempt” supply and this restricts the recovery of VAT by the operators.

The Treasury undertook a consultation exercise with the industry in the Island in 2002. However, given the changes anticipated, both domestically and internationally, the plan to produce a “Betting Duties Bill” was put on hold.

The basic principle behind the original plan remains sound. That is that the complicated and dated mix of legislation dealing with the excise duty aspects of gambling law would be usefully simplified and codified. As with the streamlining of the licensing processes, operators should be presented with a harmonised framework for regulating their compliance with the requirements relating to the payment of excise duty. The Treasury believes the time is now right for putting such a framework in place, and to do so can only enhance the attractions of the Island as a well-regulated jurisdiction for gambling operators, ensuring that the revenue is protected, and compliance costs (for both operators and Government) are minimised.

EXISTING LEGISLATION

1. THE POOL BETTING (ISLE OF MAN) ACTS 1961 TO 1970

The Pool Betting (Isle of Man) Acts 1961, 1965 and 1970 are based on UK legislation and closely correspond to it.

Because pool betting duty charged under the Acts is one of the indirect taxes governed by the Customs and Excise Agreement those liable to pay it in the Island are liable to duty at the same rate as is chargeable in the UK. The current rate is 15% of the "net pool betting receipts", effectively the gross profit of the pools operator (or "promoter").

Traditionally, pools promoters operated by means of coupons sent by post or distributed and collected using a network of agents. This market was dominated by a handful of companies, with virtually all such business now consolidated into one. None of these companies were ever based in the Isle of Man, and in fact only one company was ever licensed to offer such services in and from the Island. There are currently no operators licensed under the Acts in the Island.

When the Island's gambling law was being examined during 2005-07, in the light of the imminent changes to UK gambling law being effected by means of its Gambling Act 2005, a decision was taken that any future online pools operators should be licensed and controlled under OGRA. This change was made. However, because of the requirements of the Customs and Excise Agreement the rate of online gambling duty that any such operators have to pay remains 15%, i.e. a non-standard single rate and not the tiered duty structure applying to other online gambling.

The scope for changes to the pool betting regime is somewhat restricted due to the requirements of the Customs and Excise Agreement. However, any online operator would now be asked to use the same period returns as other online gambling operators, and comply with the same general requirements. It is proposed that this be taken a stage further, with the Bill to encompass non-online operators as well, thus providing a single control structure for all pools promoters regardless of how they operate. The duty-rate will remain linked to that in the UK.

2. THE BETTING ACT 1970

Like the Pool Betting (Isle of Man) Acts, this too was based upon the corresponding UK legislation. When off-track betting was legalised by the Act HM Customs and Excise still administered excise duties in the Island, and both legislation and a control regime mirroring that in the UK was adopted. The name of the tax imposed on such betting was general betting duty.

Until 1998 bookmaking in the Island was generally confined to purely local, mainly walk-in retail betting. In 1998 the Treasury amended the law to facilitate what was termed "international telephone betting". A reduced duty-rate was introduced for bets placed by off-Island punters who were located outside the UK. In due course this evolved into a three-tier structure of –

- 15% for bets from punters located in the UK,
- 10% for punters in the Isle of Man, and
- 1.5% for those located elsewhere.

Whilst general betting duty was not, unlike pool betting duty, a tax pooled and shared under the Customs and Excise Agreement the duty-rate was nevertheless kept aligned with that in the UK. This was partly because there was not seen as any need or desire to encourage gambling operators locating in the Island (in fact there was a ceiling on the number of licences for bookmakers' establishments available under the relevant legislation¹). Also both the UK and Island legislation contained provisions stating that, so long as the effective duty-rate in the other place was at the same as its own, operators could operate in the other place as if licensed etc there. Without this any advertising or other touting for business by, for example, the large UK bookmaking chains in the Island would have been unlawful – together with the advertisements carried in the UK national press sold in the Island.

Hence, until the late 1990s the duty-rate on the Island was kept at the same rate as in the UK. When international telephone betting was introduced it was decided that the duty-rate for UK punters should continue to match the UK rate. This both demonstrated the Island's commitment to being a good neighbour, by not being seen to "poach" business from UK operators, and also meant that any Island-based concern could seek business in the UK without fear of falling foul of the law there.

A number of companies took advantage of the revised betting regime. These included a number that found the arrangement whereby they could do business in the UK as if licensed there very beneficial². This meant that, even with the problems that beset the online gaming side, the betting/bookmaking side of the gambling sector continued a steady growth. This was aided by the removal of the ceiling on the number of licensed bookmakers under the social legislation.

What had began as international telephone betting soon developed to include online betting, as the definition of "international telephone betting" included any bet placed by a electronic communications device and the growth of the Internet and betting on the Internet made this an obvious area of expansion.

1 The Gaming, Betting and Lotteries Act 1988, which dealt with licensing of bookmakers and other, social law aspects (such as under-age betting, access to licensed premises etc).

2 This is an arrangement the Island has managed to continue, with it being included on the "White List" of territories whose licensed operators may advertise etc in the UK.

After 2001 increasing interest in *pari-mutuel* betting was shown by operators based in, or considering moves to, the Island. This is a form of pool betting, of which the most commonly known example is perhaps that offered by the UK Tote on horse racing. In the UK, off-course “tote” betting was referred to as “sponsored pool betting” and was treated, for duty purposes, as a form of betting that was liable to the historically much lower general betting duty and not pool betting duty. Following negotiations with HM Customs and Excise a form of sponsored pool betting was introduced in the Island in 2001. As in the UK, this would be treated as general betting and not pool betting.

Following changes made to OGRA, and orders and regulations made under OGRA, in 2007 both “normal” betting and sponsored pool betting were transferred to the OGRA licensing and regulatory regimes. At the same time, they were to become liable to online gambling duty instead of general betting duty. The result was that on 1st September 2007, when the UK’s White List and its Gambling Act 2005 came fully into operation, all forms of online gambling in the Island – general and pool betting and online gaming – became liable to the same duty and the same general requirements and procedures.

3. THE ONLINE GAMBLING REGULATION ACT 2001

This Act governs the licensing and regulation of “online gambling”. The definitions used in the Act mean that this term includes any gambling that takes place by means of electronic communications, and it therefore includes telephone betting and even placing wagers by fax. The only delivery methods that would seem to fall outside the scope of the Act would be where the betting transaction takes place by means of the postal system and where the punter places the bet in person at such places as the casino or a betting shop.

The Gambling (Amendment) Act 2006 and other legislation has made changes to OGRA and the framework of law surrounding online gambling. However, whilst OGRA provides basic enabling powers for the Treasury to set rates of online gambling duty and prescribed how it should be rendered, it does not deal with the administration of the duty to the degree that is considered necessary for the effective operation of the regime.

The various changes made have seen a resurgence in interest from operators wishing to be licensed under OGRA. Allied to this has been the transfer of *pari-mutuel* and bookmaking operators to OGRA licensing. The inclusion of the Isle of Man on the UK’s “White List”, the development of business continuity provisions, the Island’s first-rate telecommunications set-up, and the location of industry-leading software and other support companies have all contributed to a growth in activity in the sector.

The proposed Gambling Duties Bill would leave OGRA large unaffected. It is proposed that the new Bill would repeal and replace section 5 of OGRA, which deals with online gambling duty. Any secondary legislation dealing with duty payments, period returns and so on would also require replacement. However, the remainder of OGRA and its subordinate legislation, dealing with the licensing and regulation of operators, would remain untouched.

THE PROPOSED BILL

1. THE BASIC FRAMEWORK

It is proposed that the Bill would –

- a. Repeal section 5 of OGRA and provide for a duty of excise called “**Gambling Duty**”, to be administered by Customs and Excise;
- b. Propose that duty should be charged on the “**gross yield**” of gambling activities, and that this gross yield should be determined in the same ways as currently used to arrive at the basis of liability for general betting duty and online gambling duty;
- c. cover not all online gambling now covered by OGRA, plus pool betting covered by the Pool Betting (Isle of man) Acts, and on- and off-course betting including that taking place in betting shops;
- d. Allow the Treasury to make essential amendments of the Act by order (subject to approval by Tynwald) to allow it to keep up to date with technological and market developments;
- e. Allow for the making of regulations to deal with detail matters, such as the layout and content of duty returns, how and when payments may be made;
- f. Require those operators intending to commence operations liable to the duty to provide notice of their intention to Treasury in advance;
- g. Allow for the imposition of duty on unlicensed and unlawful gambling;
- h. Provide for assessment of duty where operators have failed to declare dutiable activity, and for the enforcement of such assessments. this should include the use of Treasury Warrants or distress action for the recovery of debts of duty;
- i. Provide for offences and penalties where requirements in the Act, orders or regulations are contravened;
- j. Provide a right of appeal against decisions of the Treasury relating to the duty, assessments, duty returns etc;
- k. Provide for powers for officers of customs and excise, including the right of access to premises, records etc. There should also be powers in relation to premises associated with the gambling activities but on which actual gambling does not take place, and for access to documents held by third parties;
- l. Make it an offence for a person to purport that they are licensed or authorised to carry on a licensable activity in the Isle of Man, and allow the Customs and Excise to disclose information relating to such an offence to another jurisdiction where necessary;
- m. Provide for such specific offences as fraudulent evasion of duty, use of false

declarations and documents;

- n. Provide that a court may order forfeiture of any article related to an offence against the Act;
- o. Provide that an officer may use powers available to them under the Act regarding access to premises and documents for the purpose of ensuring compliance with the requirements of anti-money laundering legislation and guidance;
- p. Give protection to officers taking any action in pursuance of enforcement of the Act should they do anything that would otherwise be an offence under an enactment relating to gambling;
- q. Allow for the exchange of information with relevant bodies in the Island (the police, Gambling Supervision Commission, Office of Fair Trading) and, for the detection or prevention of crime including fraud and corruption, with regulatory bodies and those responsible for criminal investigations or proceedings in other countries;
- r. Provide a discretionary power to provide information to bodies responsible for the regulation of sports, financial transactions or other activity where this is necessary to detect or prevent corruption involving gambling on those sports, transactions etc.

2. THE PROPOSED FORMAT

The proposed layout of the Bill would be as follows –

- Part 1 - Gambling Duty:
Definitions, liability etc. Returns. Power to make orders and regulations. Requirement to give notice of activities. Application to unlicensed gambling.
- Part 2 - Enforcement:
Records. Access to premises and records. Assessments of duty. Offences and penalties. Debt management. Access orders and search warrants. Anti-money laundering controls. Protection of officers. Exchange of information. Reviews and appeals.
- Part 3 - Miscellaneous:
Application of the revenues. Amendments of the Act. Interpretation. Consequential amendments. Repeals. Commencement.
- Schedule - Definition of certain terms used in the Act.

3. WHAT IS NEW IN THE PROPOSED BILL?

The bulk of what it is proposed to include in the Bill is either carried forward from the Pool Betting (Isle of Man) or Betting Acts, or reflects existing practice and procedure under OGRA and its subordinate legislation.

However, there are a number of matters proposed for inclusion that are new, or may be included in a form somewhat different than is presently the case. These are –

- a. having a single Act to deal with both online gambling and on- and off-course betting and pool betting;
- b. providing that the Act may be amended by order to keep pace with changing technological and market developments (n.b. the Pool Betting and Betting Acts currently permit amendment by order to match corresponding UK legislation);
- c. requiring all operators to provide notice in advance to Treasury's Customs and Excise Division of their intention to commence dutiable operations (n.b. this requirement already exists in the Pool Betting and Betting Acts);
- d. providing for the use of Treasury Warrants to enforce duty debts. Treasury Warrants are currently used by Customs and Excise to enforce VAT debts, and by Income Tax to enforce tax debts, have the force of a High Court judgment and are signed by the Collector of Customs and Excise³;
- e. to fully align the procedure for review of, and appeals against, decisions relating to duty with those for other forms of excise duty administered by the Customs and Excise Division;
- f. ensuring that officers' powers of access to premises and documents extends to all relevant premises associated with gambling activities – and hence to such as call centres, back-office accounting or support centres and so on;
- g. creating an offence of "holding out" that a person is licensed in the Island. This would enable the Island to request Internet service providers to block offending websites⁴;
- h. explicitly providing that an officer may use their powers in relation to checks of an operator's compliance with anti-money laundering legislation and guidance;
- i. providing the Treasury the discretion to disclose information to bodies responsible for the regulation of sports, financial transactions etc where this is necessary to detect or prevent corruption.

3 Paragraph 6 of the Value Added Tax Act 1996 provides for the issue of Treasury Warrants for VAT debts, and paragraph 7 with the right of appeal to the Chief Registrar. It is envisaged that the Bill would contain similar provisions.

4 The Financial Supervision Commission is able to take such action in respect of sites purporting to be offering investment business regulated in the Isle of Man.

4. TIMETABLE

Respondents are asked to submit any comments they may have to the Customs and Excise Division by **20 June 2008**.

It is anticipated that a Bill would be prepared during the latter half of 2008, and that it would be released for industry comment at that time.

It is hoped that a final version of the Bill could be available to begin its progress through Tynwald before the end of 2008.

HOW TO RESPOND

Please send any comments on the proposals contained in this consultation document to –

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