



ONLINE GAMBLING REGULATION ACT 2001

ONLINE GAMBLING (EXCLUSIONS) REGULATIONS 2010

Laid before Tynwald

2010

Coming into operation

1st January 2010

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

1. Citation and commencement

- (1) These Regulations may be cited as the Online Gambling (Exclusions) Regulations 2010
- (2) These Regulations come into operation on 1st January 2010

2. Interpretation

In these Regulations —

- "Act" means the Online Gambling Regulation Act 2001, as amended;
- "Code" means the Criminal Justice (Money Laundering) Code 2008;
- "gambling program" means any program or algorithm by means of which —
- (a) a person is presented with a method of taking part in online gambling;
 - (b) in relation to gaming, a player may enter the game or may take any step in the game;
 - (c) a bet may be negotiated or received;
 - (d) a person may acquire a chance in a lottery;

¹ 2001 c.10
Price Band A: £1.50

	(e)	personal data relating to and provided by a player are held; or
	(f)	the result of any online gambling is or may be generated.
"online gambling"		has the meaning defined in 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;
"operator"		in relation to any online gambling, means the party by whom it is conducted and who is licensed under the Act;
"overseas operator"		means a party which is licensed in a jurisdiction other than the Isle of Man to provide online services;
"player"		means a person participating in online gambling and/or online services other than the operator and/or overseas operator or any employee or director of such;
"provider"		in relation to an activity described in Schedule 1, means the person by whom the activity is carried on;
"relevant business"		means engaging by way of business in one or more of the businesses, transactions or activities specified in Schedule 1 of the Code.

3. Activities excluded from online gambling licensing

Without prejudice to section 3(1) of the Act (exclusion of certain activities);

- (1) Subject to paragraph 3(2), the activities described in Schedule 1 are hereby excluded from the provisions of section 2(1) of the Act (requirement for licence)
- (2) Paragraph 3(1) above shall only apply in the event that the conditions specified in column 2 of Schedule 2 are complied with.

4. Anti-money laundering

Without prejudice to any other enactments that may apply, any provider that carries out relevant business as defined in the Code must comply with the relevant provisions of the Code

5. Penalties

If any person is in contravention of any provision of these Regulations, it shall be guilty of an offence and liable on summary conviction to a term of custody not exceeding six months or a fine not exceeding £5,000, or both

6. Revocation

The Online Gambling (Advertising) (Overseas) Regulations 2007² are revoked

² SD 730/07

Paragraph 3(1).

SCHEDULE 1
EXCLUDED ACTIVITIES

1 *Advertising*

Means anything (irrespective of any medium that may be utilised) and/or any act which solicits or encourages players or potential players to participate in online gambling and/or online services including the raising of brand and site awareness through sponsorship and endorsement, carried out by an overseas operator, or by a person on behalf of any operator.

2. *Marketing analysis and services*

Means;

- (1) The analysis by an overseas operator, or by a person on behalf of any operator, for marketing purposes of data relating to online gambling and/or online services conducted by that operator or overseas operator;
- (2) The supply by an overseas operator, or by a person on behalf of any operator, of information about online gambling and/or online services conducted by that operator or overseas operator to players selected as a result of such analysis;
- (3) Player retention and affiliate programmes, loyalty schemes, and, where the facilities are designed to encourage players to gamble online, the provision of online information, chat room and web logging services and related content.

3. *Administration*

The carrying out by an overseas operator, or by a person on behalf of and in accordance with instructions given by any operator, of any of the following activities relating to online gambling and/or online services conducted by that operator or overseas operator—

- (a) record-keeping;
- (b) accounting;
- (c) receiving and paying money in a back office function on behalf of an operator or overseas operator;
- (d) monitoring of online gambling and/or online services by players.

4 *Web design*

The design, by an overseas operator, or by a person on behalf of any operator, of graphics, layout, look and feel and other visual characteristics of a website by means of which online gambling and/or online services is conducted by that operator or overseas operator.

5. *Software design*

The design of programs by means of which online gambling and/or online services may be carried on by operators or overseas operators, including —

- (a) revising and updating such programs; and
- (b) correcting errors in such programs.

6. *IT services*

The provision, updating and repair, by an overseas operator, or by a person on behalf of any operator, of computers and other devices by means of which online gambling and/or online services may be carried on, including installing and updating programs on such devices

7. *Protection of players' funds*

(1) The provision for an operator, by a person licensed under the Financial Services Act 2008³ to carry on deposit taking, corporate services or trust services, of services consisting of the holding of money which the operator —

- (a) holds or receives on behalf of a player, or
- (b) owes to a player.

(2) The provision for an operator, by —

- (a) a person licensed under the Financial Services Act 2008 to carry on deposit taking, or
- (b) an authorised insurer within the meaning of the Insurance Act 2008⁴,

of security for the payment of debts of the operator arising out of online gambling conducted by the operator.

8. *Presentation of result of play*

The maintenance by an overseas operator, or by a person on behalf of any operator, of a computer or other device on or by means of which the results of online gambling conducted by that operator are displayed to players.

9. *Call centres*

The provision by an overseas operator, or by a person on behalf of any operator, of services consisting of the answering of telephone calls and electronic messages from players in online gambling and or online services conducted by that operator and or overseas operator.

10. *Download servers*

The maintenance by an overseas operator, or by a person on behalf of any operator, of a computer or other device —

- (a) from which a person may download a program by means of which players may take part in online gambling and/or online services; and

³ 2008 c 8

⁴ 2008 c 16

(b) which is not used for any other purpose in connection with that online gambling and/or online service

11 *Relay servers*

The maintenance by or on behalf of an overseas operator of a computer or other device for the sole purpose of receiving and re-transmitting to a computer or other device located outside the Isle of Man telecommunications between that overseas operator and players in online gambling and/or online services conducted by that overseas operator.

Paragraph 3(2)

SCHEDULE 2
CONDITIONS

<i>Description of activity</i>	<i>Conditions</i>
1. Any activities specified in Schedule 1 carried on by or on behalf of an overseas operator	No express or implied representation may be made by or on behalf of the overseas operator that the activity is licensed or regulated in the Island
2. Any activity specified in paragraph 1 or 2 of Schedule 1 carried on by or on behalf of an operator and/or overseas operator	<p>(1) Any advertisement must comply with the requirements of regulation 3 of the Online Gambling (Advertising) Regulations 2007⁵.</p> <p>(2) The provider must not publish or distribute any advertisement relating to online gambling of any description, or cause or permit any such advertisement to be published or distributed, in any country or territory unless the operator or overseas operator is permitted by the law of that country or territory to conduct online gambling of that description in that country or territory.</p> <p>The provider or overseas provider must make a player with whom the provider or overseas provider is in contact in the course of the activity aware that the provider or overseas provider is carrying on the activity on behalf of the operator and not on the provider's or overseas provider's own behalf</p>
3. Any activity specified in paragraph 8, 10, or 11 of Schedule 1	The provider or overseas operator must not in the course of the activity maintain a gambling program on a computer or other device
4. An activity specified in paragraph 11 of Schedule 1	The content of the data passing through the device cannot be modified except in respect of its transmission characteristics.

⁵ SD 726/07

MADE

17th December

2009



Minister for the Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations exclude the activities specified in Schedule 1 from the requirement for an online gambling licence, subject to compliance with conditions set out in Schedule 2