

ONLINE GAMBLING (PARTICIPANTS' MONEY) REGULATIONS 2010

CORRECTION

In the definition of “recognised bank” in regulation 3(1) of the Online Gambling (Participants’ Money) Regulations 2010¹, for “Financial Supervision Act 2008” substitute “Financial Services Act 2008”.

Issued by authority of the Attorney General
10th November 2011

¹ SD 832/10
² 2008 c.8



Statutory Document No. 832/10

ONLINE GAMBLING REGULATION ACT 2001

ONLINE GAMBLING (PARTICIPANTS' MONEY) REGULATIONS 2010

Laid before Tynwald

14 December 2010

Coming into operation

20 December 2010

The Treasury makes these Regulations under section 21(1A) of the Online Gambling Regulation Act 2001¹.

1 Title

- (1) The title of these Regulations is the Online Gambling (Participants' Money) Regulations 2010.

2 Commencement

- (1) These Regulations come into operation on 20 December 2010.
- (2) These Regulations apply to participants' money held by an operator on the coming into operation of these Regulations as well as to participants' money received by an operator after that time.

3 Interpretation

- (1) In these Regulations —

“Approved player protection mechanism” means security provided or deposits and reserves maintained in accordance with conditions of the operator’s license imposed under section 6(2) of the Online Gambling Regulation Act 2001;

“client account”, in relation to an operator, means an account held by the operator at a recognised bank which —

- (a) includes the words “client account” in its title;

¹ 2001 c.10

Price £1.00

(b) is specially created by the operator for the purpose of holding either —

(i) participants' money; or

(ii) where appropriate, amounts held in accordance with regulations 5(2) and 5(3); and

(c) is segregated from any account holding money which is neither participants' money nor amounts held in accordance with regulation 5(2) and 5(3);

"the Commission" means the Isle of Man Gambling Supervision Commission;

"operator" means a person by whom online gambling is conducted;

"participant" means a person (other than an operator) who takes part in online gambling;

"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;

"payment service provider" means a person who, in accordance with arrangements made with an operator, provides services for accepting electronic payments from or making electronic payments to participants;

"operator's system" means any record of any type which can be used to determine the amount of money a participant has access to for the purpose of gambling with that operator;

"recognised bank" means an institution licensed under section 7 of the Financial Supervision Act 2008² to carry on deposit taking (as defined for the purposes of that Act).

(2) For the purpose of these Regulations an operator is in default where —

(a) a liquidator, receiver, administrator or trustee in bankruptcy has been appointed in respect of it;

(b) any equivalent procedure has occurred in respect of it in a country or territory outside the Island and the United Kingdom;
or

² 2008 c.8

- (c) the Commission has directed that it shall be treated as in default for the purpose of these Regulations.

4 Duty to hold participants' money separately

- (1) An operator must pay all participants' money received by it into a client account.
- (2) Participants' money must be held on trust for the participant entitled to it.
- (3) Paragraph (1) does not apply to participants' money to the extent to which any liability of the operator to pay that money to participants is covered by security provided or deposits and reserves maintained in accordance with conditions of the operator's licence imposed under section 6(2) of the Online Gambling Regulation Act 2001.
- (4) Participants' money held in a client account that conforms to these regulations is deemed to satisfy the licence conditions imposed by section 6(2) of the Online Gambling Regulation Act 2001 in respect of the provision of security, deposits and reserves.
- (5) Paragraphs (1) and (2) do not apply where the operator pays participants' money to, or by the written direction of, the participant entitled to it.

5 Additional amounts to be held in client account

- (1) This regulation applies where a participant makes an electronic payment to or receives payment from an operator through a payment service provider.
- (2) If there is a shortfall between the total amount of money available from an operator's approved player protection mechanisms and the total value of participant's money as recorded on the operator's system then the operator must hold additional funds in the client account equal to the difference - so that, if required, all participants' money may be paid to participants from that operator's approved player protection mechanisms alone.
- (3) It shall be acceptable for the purposes of reducing the volume of money transactions to and from a client account for an operator to maintain a surplus of money, or allow to accrue bank interest in a client account equal in value or percentage to that agreed with the Commission.
- (4) Money held in a client account in respect of paragraphs (2) and (3) shall be considered participants' money and its use for purposes other

than safeguarding participants' money must be approved by the Commission.

- (5) Surplus money in a client account held as described in paragraphs (2) and (3) may be drawn from the client account by the operator provided this action does not bring the total value of the funds in the operator's approved player protection mechanisms below the total value of participant's money as recorded on the operator's system.

6 Trusts of participants' money

Participants' money held by an operator is held on trust —

- (a) on the terms and for the purposes set out in these Regulations and, subject to that, *pari passu* for the respective participants from whom it is received and for whom it is held;
- (b) subject to sub-paragraph (a), *pari passu* in meeting any shortfall in valid claims by participants to participants' money (disregarding regulation 7 for this purpose); and
- (c) after all valid claims under paragraphs (a) and (b) have been met, for the operator itself.

7 Pooling

- (1) For the purpose of regulation 6(a), in determining the entitlement of participants to participants' money, all participants' money, even if held in more than one client account in any number of banks, shall be treated as pooled.
- (2) Where, at the time that an operator is first in default, a cheque or other payable order has been paid into a client account but has not been cleared, the amount of the cheque or other payable order shall, when it is cleared, be pooled in accordance with this regulation.

8 No withdrawal in case of default

- (1) Where an operator is in default, no money may be withdrawn from any client account of the operator without the consent of the Commission;
- (2) Paragraph (1) does not apply to any step taken by the operator in good faith which it reasonably believes will preserve or enhance the fund of participants' money available despite the default.
- (3) The Commission may advise a recognised bank that an operator is in default as described in regulation 3(2). This notification may originate from the Commission or from the operator acting upon the Commission's instructions notifying the bank of its default status.

- (4) It shall be a defence for a recognised bank that facilitates a breach of regulation 8(1) (and thereby an offence against section 21(1B) of the Online Gambling Regulation Act 2001) that the Commission has not advised the bank that the operator is in default.

9 Displacement of general law

The duties of an operator under these Regulations in relation to participants' money shall take the place of the corresponding duties which would be owed by it as a trustee under the general law, but without limiting the remedies available to participants.

MADE

26th November

2010



Minister for the Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations require money received by an online gambling operator from, or held by the operator on behalf of, participants in the gambling to be paid into a client bank account and held on trust for the participants, and to be pooled in case of default. They also provide that section 6(2) of the Online Gambling Regulation Act 2001 (which requires a licence to provide for security or deposits to protect debts owed to participants) is to be treated as having been satisfied where participants' money is protected in accordance with the Regulations.

