

AN INITIAL CONSULTATION DOCUMENT



ISLE OF MAN GAMBLING SUPERVISION
COMMISSION

MISCELLANEOUS PROVISIONS

[APRIL 2013]

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The contents of this document are the property of the Gambling Supervision Commission (The GSC).

This consultation exercise closes on Monday 30th September 2013.

1. Introduction and Background

1.1 This proposed miscellaneous provisions Bill is designed to modify Isle of Man gambling legislation in a number of important but unrelated areas.

1.2 Its main function is to respond to requests that have been made by the Isle of Man's industry.

It also sweeps up a number of changes that the GSC has noted as desirable but which in themselves have never constituted changes of sufficient importance to warrant a Bill of their own.

1.3 The changes in this process will be consulted upon in two phases. In the first phase, the broad intentions of the Bill will be introduced and people will be asked to comment on:

- The proposed changes; and
- any items they think should be in a miscellaneous provisions bill but which haven't been included in the programme.

1.4 This document is the first phase.

2. The measures being proposed

The GSC is consulting on the following items:

- 2.1** Provisions to allow an existing casino licence holder to transfer operations from one set of premises to another or to additional premises under the same licence.
- 2.2** A change which allows the Council of Ministers (CoMIN) to waive or adjust the value of the deposit required to be made by the applicant of a casino licence concession – that is, when the applicant does not own suitable premises (e.g. who intends to provide (build or purchase) premises in expectation of a licence.)
- 2.3** Changes to the current law relating to controlled machines (slot machines and so forth) which will allow the Isle of Man – if desired – to change its regime to be compatible with that in the UK. These changes will also separate certain land-based games from online gambling law.
- 2.4** Changes which allow the GSC to cooperate with international gambling regulators in a more integrated way.
- 2.5** A change which separates lotteries and draws which are run for promotions from those run for private gain.
- 2.6** Provisions to refund unused portions of an online gambling licence when a new, more expensive licence is acquired or when a specific type of licence hasn't been fully utilised in a year.
- 2.7** Changes which simplify the process of holding a society lottery or fund-raiser with a gambling element.
- 2.8** The removal of duty from controlled machines in recognition of the newly introduced machine gaming duty.
- 2.9** A number of changes which correct oversights, typographical errors or omissions in gambling law. Likewise, a number of changes which clarify the intentions of existing law will also be made.
- 2.10** Miscellaneous items

3. Consultation

3.1 This consultation exercise is designed to invite comments on the consultation document and is being conducted by the Gambling Supervision Commission.

3.2 A list of people and bodies consulted can be found at Appendix A of this document. If there is anyone not on the list who you think should be consulted please contact the Officer named below.

3.3 The GSC welcomes your views on the proposed changes within this document.

3.4 Comments should be submitted in writing by post or email to the following:

Mark Rutherford
Isle of Man Gambling Supervision Commission
Ground Floor, St. George's Court, Myrtle Street, Douglas, Isle of Man

Mark.Rutherford@gov.im

The consultation will be open until the close of business on 30th September 2013.

3.5 When submitting your views please can you indicate if you are responding on behalf of an organisation.

3.6 For additional hard copies please contact the Gambling Supervision Commission by telephoning 01624 694331. Hard copies will also be available from the Central Reference Library, Government Offices, Bucks Road, Douglas.

3.7 Electronic copies of this document are also available at <http://www.gov.im/gambling/regulatory.xml>

3.8 To ensure that the process is transparent and in line with the Government's Code of Conduct on Consultations, responses can only be accepted if you provide your name with your response.

3.9 Please mark your response clearly if you wish your response and name to be kept confidential otherwise it will be published in the consultation summary document. Confidential responses will be included in any statistical summary and numbers of comments received.

3.10 A summary of the responses received will be published within 3 months of the closing date for this consultation, and will be made available on the Government website or by contacting the above named Officer.

3.11 The purpose of consultation is not to be a referendum but an information, views and evidence gathering exercise from which to take an informed decision on the content of proposed regulatory changes. In any consultation exercise the responses received do not guarantee changes will be made to what has been proposed.

4. Summary of Proposals

No law has yet been drafted in respect of the following proposed changes. The outcomes of this exercise will be used to determine (a) if the changes are to be taken forward for legislative change and (b) if so, what those changes are likely to be.

Once this initial consultation has been completed and the feedback considered, a second consultation phase will be launched which will detail those changes that have been carried forward for drafting; this phase will contain the legislative changes in detail.

All feedback is welcome on any of the proposals – we ask specific questions where we think there will be a possible impact on the character of life or on the viability of business in the Isle of Man.

This consultation is also an opportunity to feed back on gambling issues which have not been touched on within the document. If you feel there is a business opportunity or a consumer protection issue that would benefit from a law change, you should feel free to highlight it as feedback.

4.1 Casino Transfer Provisions

Proposal to allow an existing casino licence holder to transfer operations from one set of premises to another or from one set of premises to additional premises under the same licence.

A casino licence is issued by the Council of Ministers (CoMIN) to a licence holder and is valid for ten years. The licence is reviewed each year by the GSC.

There are currently no provisions in the existing casino law to allow a licensee to easily move from one set of premises to another. Currently such a move would involve the licensee surrendering the licence and having it re-issued in respect of the new premises creating a licensing-gap during which the casino would be unable to operate and generate income.

The existing casino legislation was framed in such a way as to limit the number of concurrent licence holders in the Isle of Man to two at any given time. At the time of writing only one casino licence has been issued.

It would be possible to use the second licence to affect a change of premises but the mechanism is an unusual use of the law and in any event would not be available were the licence already assigned to a second licensee.

Therefore, it is proposed that a purpose-written transfer provision will be added to the Casino Act 1986.

It is proposed that the requirement will be:

"A provision is required to allow an existing casino licence holder to extend the operation of a casino across one or more facilities approved by the Council of Ministers (CoMIN), subject to the conditions imposed by CoMIN."

This requirement achieves two key objectives:

- It allows a casino licence holder to transfer operations to new premises; and
- It allows the old premises to be operated for a period of time during the transfer to effect a smooth transition.

The changes as proposed will also theoretically allow a casino licence holder to operate a casino business across multiple sites unless this is restricted by CoMIN.

What could these changes mean?

Example 4.1.1. *An existing casino licence holder could make plans to build a new casino in a new location, secure in the knowledge that the licence could be transferred. Once the build had been finished, the casino would over a period of three weeks shift its operations into the new facilities and close down its old site.*

Example 4.1.2. *An existing casino licence holder could, with permission from CoMIN expand its business opening additional facilities in other locations.*

Example 4.1.3. *An existing casino licence holder could acquire its rival casino and extend its licence to operate both sites; its rival would surrender its licence back to CoMIN. Later, the casino operator might close down its old site.*

Example 4.1.4. *An existing casino licence holder could make plans to build a new complex on the understanding that it would be able to operate in the new premises. CoMIN could agree, but on the basis that the old site and the new sites' operations cannot overlap by more than two months. When the new site is built, half of the operations are shifted into it. Within two months, all of the operations have been transferred and the old site is closed. The 10-year licence remains untouched.*

4.2 Casino Concession no longer automatically set at 20%

A change which allows the Council of Ministers (CoMin) to waive or adjust the value of the deposit required to be made by someone who wishes to apply for a casino licence but doesn't initially have premises.

The current law requires that a prospective applicant for a casino licence has premises available for licensing. In the situation where a person plans to build or convert into a new casino a concession may be granted by CoMIN to the

applicant in order to provide some degree of certainty that they may apply for a licence when they are ready to commission their casino. Under a concession, Treasury takes receipt of a deposit from the applicant equal to 20% of the estimated total build costs of the building to be completed. If the applicant fails to deliver the new premises then the concession can be withdrawn; the deposit may be retained, subject to appeal.

An applicant for a concession who intends to commit large sums of money to building a new casino may consider the security requirement prohibitive or may not be able to predict with enough certainty that he or she will be in a position to complete the build in line with the conditions attached to the concession; the risk of losing the deposit for failing to complete the build for whatever reason may prevent investment.

The Department of Economic Development has therefore considered whether the concession provisions should be modified so that CoMIN can, where appropriate, either negotiate a different rate or waive the requirement completely.

It is proposed that the requirement will:

“allow the Council of Ministers to modify or waive the requirement for the applicant to deposit with the Treasury a sum equal to 20% of the estimated building costs for the proposed casino premises.”

What could these changes mean?

Example. A developer expresses an interest in creating a casino but has yet to convert or create the premises. The economic climate does not favour the developer placing a 20% deposit with the Treasury but the proposal is nonetheless deemed to be in the interests of the Isle of Man by the Government.

CoMIN reduce the value of the required deposit to 5% and the build proceeds on that basis.

4.3 Increased flexibility for controlled machines

Changes to the current law relating to controlled machines (slot machines, fruit machines and so forth) which will allow the Isle of Man – if desired – to change its regime to be compatible with that in the UK. These changes will also separate certain land-based games from online gambling law.

The current law as applied to gambling machines dates from 1984 and defines a single type of machine that can exist outside a casino; this is called a controlled machine.

Familiar in pubs, clubs and sometimes amusement arcades, these controlled machines must conform to a standard stake and maximum prize limit – currently set at £1 and £70 respectively.

Local gambling machine suppliers have asked for flexibility on the stake and prize limits for two reasons:

- In some cases, it is believed that increasing prize levels will help to stimulate competition and will help the land-based industry to compete more effectively with the rise of internet gambling;
- Suppliers report that it is becoming difficult to obtain suitable machines from UK suppliers because the Isle of Man regime sometimes becomes out of step with the machines that UK manufacturers build.

The GSC seeks to introduce a more flexible scheme – subject to appropriate control - which allows machines to be classified based upon their environment as well as prize and stake levels.

The UK currently operates a scheme which classifies machines by stake and prize and then issues permits which control where those machines may be deployed.

Harmonising the Isle of Man's controls to those of the UK will grant flexibility to Isle of Man machine suppliers; however the GSC still wishes to retain independence from UK law so a hybrid is being considered which allows the Commission to selectively mimic the UK system whilst being able to decline changes that the UK make if they are out of harmony with Isle of Man sensibilities.

There are many machines into which the public can put money. Not all of them are gambling devices even if they dispense something of value. In order to distinguish those machines which require regulation, several categories of machines will be introduced.

Exempt machines will be:

- Machines without prizes (such as music jukeboxes, games of pool, vending machines, children's rides, machines which provide entertainment.);
- Machines where no element of chance exists (such as machines where animated puppets mime to a song and then a ticket is dispensed which can be redeemed for a gift);
- Machines where the only element of chance is provided by the participant (such as machines where the player chooses the time to drop a coin onto a bed of moving coins in the hope of dislodging some or such as a machine which invites the player to throw a ball up a slope and into one of a number of holes);
- Machines with non-payable prizes (where the prize is a bonus free play or is in some other way restricted to a feature of the game and no money or money's worth can ever be obtained irrespective of play)

Controlled machines will be:

- Machines with an element of chance and non-monetary prizes (where the 'prize' obtainable either at random or automatically can be subsequently converted into something of monetary value (such as a holiday, entry into a lottery, a plush toy, an i-Pad)

- Machines with an element of chance and monetary prizes (where the machine pays cash either directly or into/onto a card, account or other device which can ultimately be converted into cash, or where a win must be notified to a person who then provides the prize.)

Exempt machines will not be regulated by the GSC.

Controlled machines on the other hand will be regulated according to a schedule which details which machines can be deployed, the numbers that may be deployed and the maximum stake and prize limits for the deployments.

While this proposed legislative change will create the framework for a possible restructuring of licence fees, the actual machine types and rules for deployment will be subject to a separate regulatory consultation and the current machine types will simply be moved into the new regime for the time being.

It is proposed that the requirement will:

“abolish the concept of a single type of controlled machine and replace this with a regime which allows multiple types of permitted machines to be described in terms of stake, prize or any other feature and for each machine, for permitted prizes and any restrictions to be imposed – including restrictions on the place and quantity of deployment – as well as exceptions to the restrictions. Permitted machines will be those detailed in the associated regulations or excluded by regulation.”

The GSC is specifically interested in feedback from industry, politicians/local authorities and the general public on the future of controlled machines. While the change described here will not result in any immediate changes, the reformed framework will provide flexibility, if required, to redefine the shape of this industry in the Island (or of course to preserve it as it is.)

What do you think?

The general public in particular is invited to comment on whether they view the Island’s current offering of gambling machines as dated and in need of modernisation – or - acceptable as available at present.

Any feedback will also be passed to the Department of Economic Development which shapes Government’s economic policy on domestic and online gambling.

4.4 International cooperation with other countries

Changes which allow the GSC to cooperate with international gambling regulators in a more integrated way.

Cooperation between the gambling regulators of different nations, particularly within Europe is increasingly common. Regulators cooperate on a number of issues, primarily in the area of consumer protection and the exchange of information. There is also considerable effort being placed on harmonising testing standards and criteria.

A lot of the benefits of international cooperation stem from the sharing of intelligence and data or through the simplification of processes where the same goal is arrived at by two jurisdictions but where the method (but not standard) differs.

The GSC therefore intends to explore the data protection implications of information sharing and where possible, create law which allows the following types of situations to be facilitated:

- a database of problem gamblers held by the GSC to be shared with other regulators (or a pan-jurisdictional problem gambler database) to the extent necessary to prevent problem gamblers in one jurisdiction gaining access to gambling in other territories;
- test certificates issued in respect of other jurisdictions' requirements to be made acceptable for Isle of Man purposes upon approval by the GSC;
- where an information sharing agreement exists, the GSC to be able to share application and compliance data with a partner jurisdiction without incurring a legal liability if the data is subsequently mishandled by the recipient.

4.5 Promotional Draws

A change which separates lotteries and draws which are run for promotions from those run for private gain.

Promotional draws occur in the Island constantly and the Commission wishes it to remain legal for prize draws to be operated in order to incentivise people to make purchases or participate in events as well as to raise awareness of products, charities, good causes and so forth.

However it does not wish to facilitate an environment where lotteries are held for private gain – such as someone selling their house or car by lottery or simply running a private business selling lottery tickets.

It therefore proposes to make a specific requirement that all promotional or prize draws must be free to enter and that any material pertaining to the advertising or promotion of such a draw makes this condition explicit.

Where a product has been purchased and a prize draw is attached to the sale, the price of the product will not be considered to constitute a cost to enter the draw. Likewise, the accumulation of tokens or other such proof of purchase will not be considered as a cost to enter the draw.

Finally, non-monetary requirements to enter (such as the provision of contact information for e-mail marketing purposes) will not be considered a cost to enter the draw.

Notwithstanding the general undesirability of youth in gambling, the GSC wishes to be able to grant permission for draws to be offered to under-18 year olds on a case by case, or on a blanket¹ basis.

¹ The Commission may for example wish to consider all prize draws for toys and appropriately rated media to be eligible for under 18 participation as a matter of course.

What could these changes mean?

Example 1. The government might wish to incentivise young people into training schemes in order to tackle the issue of young people not in education, employment or training. It offers a prize of a trendy gadget and all those who apply for the new scheme are eligible to be entered into the draw.

Example 2. A Supermarket wishes to incentivise consumers to purchase a new product so it announces that everyone who purchases a "BBQ 3000 set" will be eligible for a draw, the prize being a complimentary set of cookery equipment as used by a famous TV chef.

However, the following would still need a licence to operate.

Example 3. A phone company operating a text-to-win competition where the sole function of the exercise is to raise money from the price of the text, some fraction of which is offset against a prize, such as a brand new telecoms gadget, would still require a licence.

If the phone company demonstrated that the text entries were free then such a prize draw would no longer require a licence.

It is proposed that the requirement will:

"allow a lottery or other approved gambling activity to be used as a mechanism to encourage participation in an event or promotion provided no monetary charge is made in respect of the draw on participants. The current prize competition legislation to be removed to prevent confusion. The Commission to be able to vary minimum age restrictions as appropriate."

4.6 Licence discounts for upgrades and part use

Provisions to offset unused portions of an online gambling licence when a new, more expensive licence is acquired; also pro-rata payments for network partners.

Online operators are required to obtain a licence from the GSC. The licence fee varies with the privileges of the licence. From time to time operators determine that they are ready to utilise a superior licence.

At present, operators pay for licenses on an annual basis; if a superior licence is purchased, no refund is possible of the unused portion of the previous licence. This can act as a barrier to upgrading as licensees often defer upgrading until their annual renewal and business opportunities are lost in the interim.

The GSC would prefer to be able to offset unused portions of inferior licences to operators against their new licence fee.

What could these changes mean?

An operator has a sub-licence which carries a £5,000 p.a. licence fee. It requests an upgrade to a standard licence which carries a fee of £35,000 p.a.

The request comes after 200 days of the sub-licence's issue so 165 days of licensable time is left. The GSC calculates the value of the unused portion to be:

$$£5000 \times \frac{165}{365}$$

So a discount of £2260 would apply against the new licence fee of £35,000 and an invoice for £32,740 would be raised.

The ability to refund would not apply to downgrades or the termination of a licence where the current regime would continue to apply (i.e. no refunds).

It is proposed that the requirement will :

"allow the GSC to offset unused portions of a licence fee – calculated on a daily basis to a formula provided by the GSC – against the cost of a new licence fee, provided the annual cost of the new licence exceeds the total annual fee of the previously held licence ."

Another type of licence that an operator can use is a network licence. A network licence allows the operator to conclude business deals with other gambling companies around the world and host those companies' players on its Island-based servers. A company which sends players to a Manx network licensee is called a network partner.

Under this arrangement, the operator is charged for a licence fee upon renewal and the licence fee is augmented by £5,000 for every network partner that has had access to the Isle of Man's network in the previous year.

Often, if a network partner joins part way through the year, the Isle of Man licensee cannot generate enough profit from the enterprise to cover the £5,000 network partner component of the renewal fee.

The Commission would like to modify the charging arrangement so that the network partner component of the fee is charged on a pro-rata basis. i.e. only a network partner which has been with the network for a year pays the full price.

The calculation would be on the same principal outlined earlier for the upgrading of unused licenses and the offset would only be applicable in respect of network partners which joined for the first time and were still active at the point of renewal – network partners that joined and left within the year and network partners who joined in a previous year would not attract the offset.

It is proposed that the requirement will:

“allow the GSC to reduce the network partner component of the OGRA licence fee of a network services licensee in respect of any network partner which has joined, and remains a partner of an Isle of Man network services licensee to the extent that no charge will be made for days prior to the date the partner first joined the network.”

4.7 Charity Lottery Requirements Simplified

Changes which simplify the process of holding a society lottery or associated fund-raiser with a gambling element.

The legislation that governs the use of gambling to help raise funds for charities and associations (such as sports clubs) has been criticised as excessive and overly bureaucratic; in particular the annual registration process and the reporting requirements can incur administrative and financial overheads on charities that are largely unintended.

The Isle of Man Government is committed to reducing bureaucracy and the GSC supports this strategic aim.

The GSC therefore intends to reform this area of gambling law by repealing pieces of legislation applying to society lotteries in the following way:

- the administration fee chargeable for registration to be removed;
- annual registration requirements to be waived for long-established societies at the discretion of the GSC – although it is likely that the GSC will still seek to refresh registration on a 5 yearly basis;
- reporting requirements to be on an exception- or request-basis. This means that while a record of a gambling event will still need to be made, there will be no need to report it to the GSC unless certain criteria have been met (such as some kind of breach) or the GSC has requested to review the record, perhaps as part of a sampling exercise or a general review of the society’s gambling type fund raising activities. The GSC will undertake a sampling exercise from time to time to ensure proper records are being kept;
- the need to apply for exceptions to stake and prize limits on a case by case basis to be replaced by an annual cap. Instead of applying for higher than normal stakes (ticket prices) and/or prize values, societies will instead be subject to a maximum aggregate value of prizes that can be offered in a given year and will be given complete freedom to choose ticket price – a reliance being placed on the general public to determine if they believe the ticket price and the prize are compatible. No policy has been formed to determine the cap but a nominal working cap of £30,000 per annum (perhaps variable by request to the Commission) is suggested as a discussion point in this consultation.
- to cater for fund-raising efforts by schools at school fairs, bingo nights etc a bespoke regime to be introduced where certain games of chance

can be offered to families (including accompanied children) at very low prize and stake levels.

Limits will be maintained that prevent societies from becoming de-facto gambling operators which compete with domestic, commercial gambling operations.

It is proposed that the requirement will:

- repeal the application costs for charity lotteries;
- retain the annual application requirement but allow the Commission to extend the period between applications on a case by case basis;
- retain the requirement for records to be kept of gambling but to change the checking basis from one of mandatory reporting to one of requested reporting;
- repeal the stake and prize limits and replace them with an annual prize cap, cited in regulations, that operates for every charity unless otherwise indicated by the Commission;
- create an exemption from gambling law for school and club fund-raisers where the prize and stake levels are trivial;
- allow the Commission to investigate a complaint that a charity has become a de facto gambling organisation and if found to be true, to impose conditions upon that charity to restore the intended function of gambling events as a supplement to fund raising rather than the unintended function as competition for private, licensed gambling business.

What do you think?

We are particularly interested to hear:

- from charities and their opinions on the concept and the proposed value of the capping mechanism;
- from existing gambling operators in the domestic sector their opinions on whether they consider the proposed reforms to be a threat to their business or whether they view charity and business gambling to be largely mutually exclusive.

4.8 Repeal of interim duty on Controlled machines

The removal of interim duty from controlled machines in recognition of the newly introduced machine gaming duty.

Since 1984 all gambling machines (such as fruit machines) except those deployed in a casino have been charged duty by the GSC. The duty is known as interim duty and is calculated by reference to the number of machines deployed and the stake they charge for a play.

Following changes in the UK, the Isle of Man's Treasury was obliged to introduce a new duty called Machine Games Duty (MGD). This duty applies to

the same machines as interim duty (in fact it applies more widely by requiring duty payments in respect of casino-based machines too).

As a result, two duties are now in effect in relation to gambling machines.

The Treasury has agreed that interim duty should be abolished.

It is proposed that the requirement will be:

Part A : "Interim duty as described in the Gaming Amendment Act of 1984 will be repealed."

4.9 Corrections and oversights

A number of changes which correct oversights, typographical errors or omissions in gambling law. Likewise, a number of changes which clarify the intentions of existing law will also be made.

An inevitable product of drafting law is the inclusion of errors into the law. These usually manifest at the point the law is first applied and as such may lie dormant for years before being noticed. Likewise it may only be at the point of applying the law to a specific circumstance that parties realise the law is ambiguous or is drafted contrary to the intentions that underpin it.

The GSC has maintained a list of such errors, oversights and ambiguities as they have surfaced and wishes to take the opportunity of this Bill to correct them.

Appendix C contains a detailed list of the items to be addressed.

4.10 Miscellaneous items

Included in the proposals for this bill are a number of unrelated items.

4.10.1 Use of developments such as "the Cloud" as a technical platform for online gambling.

Enabling provisions for regulations on the safe use of new information technology structures, such as 'cloud computing' whereby data may be stored in a fragmented and geographically disparate way. The GSC wishes to acquire regulation making powers to mandate certain protections for consumers when it permits an operator to utilise, for example, cloud computing. Once these are in place, it will be possible for Isle of Man operators to fully take advantage of this form of data processing.

4.10.2 The professional qualification of key personnel.

The GSC wishes to be able to mandate the minimum professional qualifications for key personnel if it chooses, and to lawfully exclude people from licensing who do not possess (or who are working to possess) such stipulated qualification. The requirements would be phased in at a suitable point when licences were being refreshed.

It is planned that an administrative schedule or regulation will be used to prescribe the requirements.

4.10.3 Recognition of e-mail and internet as mechanisms to disseminate information.

References to newspapers to be broadened to include such other channels as may develop, including the internet. References to newspapers currently exists in the following law (GA – Gambling Amendment Act 1984; GBL – Gaming, Betting and Lotteries Act 1988):

GA sch.1 PART I s.3(1)(b)

GBL PART III s.29(3)

GBL sch.1 s.4(1)

GBL sch.1.s.5(1) twice

GBL sch.1 s.6(1)

GBL sch.1 s.6(2)(a)

GBL sch.1 s.6(2)(b)

4.10.4 Distinction between people who own shares with voting rights and those who own shares without voting rights.

Currently the online gambling law draws no distinction between the types of control over a company that some shares confer to shareholders by virtue of the voting rights they carry.

The Commission wishes to clarify that it views any person who holds more than 10% of the shares which carry voting rights in a company as being a person who controls a company and who will be subject to integrity requirements as outlined in the Online Gambling Regulation Act 2001 s.4(2)(a).

4.10.5 Ability for Isle of Man infrastructure to be used by players under non-Isle of Man licences

As international cooperation continues to flourish, the GSC may wish to allow players that are supervised under the licence of a different jurisdiction to be registered and to bet and play using the infrastructure of an Isle of Man data hosting centre without those players being subject to Isle of Man law.

In the first instance the GSC would only be minded to grant this facility to existing Isle of Man licence-holders who held licences in other jurisdictions and who wished to consolidate players in their Isle of Man servers.

5. Additional business

In addition to the changes to primary law noted in this consultation, the GSC will also be undertaking the revision of a number of regulations. These changes are included in the consultation as the GSC welcomes feedback on all of its proposed activities.

5.1 A change to Registration and Accounts regulations (SD283/08)

Schedule 1 regulation 7(1)(b) will be replaced with the text, "if the operator of the card account or other facility will not accept it, by means approved by the Commissioners."

7(2) will be repealed as it duplicates AML code requirements.

5.2 Addition of a definition to the OGRA network services regulations (SD003/11)

Currently, there is no definition in these regulations for an overseas operator; there is a definition of 'overseas operator' in other regulation (e.g. OGRA Disaster recovery No.2 regulations (SD725/07)).

The Commission wish to clearly differentiate the two terms so that the term 'overseas operator' has a different meaning in the network services regulations.

A new term will be created for use in the network services.

The term currently referred to as an overseas operator in the network services regulations should be defined as "means a party not incorporated in or having a place of business in the Isle of Man and which operates in a jurisdiction other than the Isle of Man to provide online services."

5.3 Correction for OGRA participants' money regulations (SD832/10)

Regulation 3(1)(c) carries a definition of a 'recognised bank' which carries an incorrect reference to the Financial Supervision Act 2008 (2008 c.8). This should in fact refer to the Financial Services Act 2008.

This item has been subject to a corrigendum.

5.4 New provision in OGRA advertising regulations (SD726/07)

These regulations were drafted when the internet was relatively immature and mobile gaming technology had not developed.

It is not clear now whether the regulations apply to mobile platforms, particularly where space is too constrained to allow for the practical display of all of the requirements stipulated in regulation 2.

The Commission would therefore like to:

- Determine if a product should be treated as a website or not on a case by case basis, determined by practice notes or equivalent; and
- If it deems a product not to be a website but still subject to OGRA then it wishes to be able to stipulate that the operator can only offer the product if it makes the website requirements available to players in a way that the Commission considers acceptable. This will vary from application to application.

5.5 Additional flexibility in the OGRA Disaster recovery No.2 regulations (SD725/07)

Two changes are required to be reflected throughout these regulations:

The ability for the Commission to allow scheduled periods of use by foreign operators on Isle of Man infrastructure; and

The ability to specify three periods of disaster recovery, specifically:

- The initial period;
- The extended period; and
- The transition period.

Currently, the regulations only allow foreign operators to operate using Isle of Man servers under concession (no licence required) if they are experiencing a disaster.

In addition, the permitted period of server use is 30 days, extendable by the Commission's agreement by two additional periods of 30 days to a maximum of 90 days in any rolling 24 month period.

The Commission also wishes to be able to allow foreign licensed operators to operate from Isle of Man servers during scheduled periods, notified in advance to the Commission and covered by a fee payable to the GSC in arrears equal to a daily rate multiplied by the number of days that elapse between the foreign operator's initial indication that hosting has started and their indication that work has ceased.

For genuine disasters, the Commission wishes to replace the 30-60-90 day rule with the following regime:

When an operator first switches on its disaster recovery facilities in the Isle of Man, it will be granted an initial period which will not be charged and which will last for the period of the disaster or 90 days, whichever is the shorter.

Once the initial period has expired, the operator may purchase additional time from the Commission who will issue an extended period permit. The extended permit will charge in arrears on a daily basis.

The extended period may be re-issued by the Commission any number of times but once it expires, the Commission may only continue to allow hosting under a transitional permit.

Under a transitional permit, the operator may continue to lawfully operate facilities in the Isle of Man if:

- The extended permit fees have been all been paid;
- The operator has paid the OGRA application fee; and
- The operator's application has been received by the GSC, or the Commission has been convinced of the commitment of the foreign operator to relocate some or all of its business to an OGRA licence.

The transition permit would be free of charge irrespective of the duration of the application although, once approved the operator would be expected to commence operations under the Isle of Man regime immediately; failure to do so invoking the daily charge until the “go live” date.

No Isle of Man regulatory requirements apply to the operations of the transiting operator until it is issued with its OGRA licence and it is given permission to operate under OGRA.

What could these changes mean?

Example 1: A successful gambling company in another jurisdiction uses the Isle of Man for its disaster recovery facilities.

Its host jurisdiction suddenly experiences a series of intermittent, rolling blackouts and it decides to invoke disaster recovery in the Isle of Man for the period.

It advises the GSC who listens to the case made and says that in view of the nature of the problem, it is willing to offer an initial period of 60 days, an extended period of 30 days which it will review monthly and which will attract a daily charge of £200 payable on the expiry of the extended period.

The company agrees and starts using the Isle of Man data centre to serve its customers.

Unfortunately the blackouts continue and the GSC grants a second extended period of 30 days.

The GSC calculates the first period's invoice as:

<i>60 days @ £0</i>	<i>£0</i>	<i>the initial period</i>
<i>30 days @ £200</i>	<i>£6000</i>	<i>the first extended period</i>

The blackouts continue for a further 20 days and then the GSC is informed by the operator that they are returning to their jurisdiction's hosting.

The GSC calculates the second period's invoice as:

<i>20 days @ £200</i>	<i>£4000</i>	<i>the second extended period</i>
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The extended period's remaining time is cancelled.

The £10000 is remitted to Treasury.

Example 2: A gambling operator wishes to transfer to the Isle of Man without interrupting its service. It wishes to start running from the Isle of Man while it ties up its licensing affairs in its current jurisdiction and goes through the Isle of Man process.

The GSC agrees to an immediate transition period of disaster recovery. The company still adheres to its current jurisdiction's laws but its servers operate in the Isle of Man.

Example 3: A gambling operator wishes to undertake hardware maintenance in its native jurisdiction and wishes to operate from the Isle of Man during the predicted five day period. The GSC agrees to an extended period of up to thirty days and issues a permit, payable in arrears at £200 per day..

The maintenance takes five and a half days.

The GSC issues an invoice for £1200.

The company refuses to pay and the GSC serves a notice to its approved hosting centres to discontinue all business with the company until further notice.

The hosting centres are not obliged to switch off services or terminate contracts but they must now take reasonable steps to prevent their equipment being used by the named company to offer gambling from the Isle of Man.

What do you think?

These proposals have been created as a template for discussing how the Isle of Man might create more flexibility for operators abroad whilst (a) monetising the concessions the Island can offer and (b) creating opportunities for business to transfer seamlessly into the Isle of Man's licensing regime.

Do you think they will work? If not, what would you see as a preferable regime?

Do you think they will deter business from taking disaster recovery in the Island?

Is the extra flexibility offset by less business certainty? Which matters most to operators?

How expensive could the extended period become before operators would be deterred from taking Isle of Man disaster recovery? Will the simple principle of paying the Isle of Man government for a hosting concession be enough to deter disaster recovery business in the Isle of Man.

How practical is it to stop a non-Isle of Man business from using an Isle of Man server once a contract has been signed and once integration has been completed? What would be the most effective mechanism for inhibiting a non-compliant business from using the services without permission?

5.6 Amendment to AML/CFT code to allow for eventual withdrawal of cheque processing

The current anti money laundering and terrorist financing legislation contains measures to ensure that money that is returned to a gambler (for example winnings) uses the same channel as the initial deposit.

This provision significantly undermines the ability of fraudsters and identity thieves to profit from their criminal activity.

However not all mechanisms that allow a deposit to be made will accept a return of funds. For example, while their policy is now changing, Mastercard has traditionally only ever accepted the use of its card for deposits and has not supported the return of winnings to the card. The fact that each payment services provider chooses its own policy means that this type of non-return rule can occur.

In such cases where funds cannot be returned, the AML/CFT code permits a cheque to be sent to the residence of the player instead.

The GSC is aware that the banking sector is keen to cease offering cheques as a service and while public resistance has traditionally been vocal in the face of such proposals, the removal of cheques as an instrument of payment can be foreseen at some stage in the future.

The AML/CFT code will therefore be amended to include as a method of returning funds to a player using a non-return payment method any other method approved by the GSC.

Appendix A - A list of stakeholders consulted

Members of Tynwald;

The general public of the Isle of Man;

General Government via chief officers;

The Isle of Man Law Society;

The Isle of Man Chamber of Commerce;

All operators licensed by the Gambling Supervision Commission;

Selected non-licensable businesses with an active interest in gambling;

Manx e-Gaming Association (MeGA);

e-gaming Strategic Advisory Board;

Association of Corporate Service Providers.

Appendix B - Consultation Code of Practice

This consultation follows the Code of Practice on Consultation the criteria for which are set below.

The Six Consultation Criteria

1. Consult widely throughout the process, allowing a minimum of 6 weeks for a minimum of one written consultation at least once during the development of the legislation or policy.
2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
3. Ensure your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your Department's effectiveness at consultation.
6. Ensure your consultation follows best practice, including carrying out an Impact Assessment if appropriate.

The full Code of Practice is available at www.gov.im/cso

Appendix C – Proposed Modifications, Clarifications and Corrections

The following changes will be requested to tidy up gambling law or clarify points which have in the past caused confusion. In this section the following abbreviations are used:

OGRA – the Online Gambling Regulation Act 2001
GBL – The Gaming, Betting and Lotteries Act 1988
CA – the Casino Act 1986
GA – the Gambling Amendment Act 1984

Unless otherwise stated, the act to which the narrative refers is the first item in each header.

C1. OGRA s.1(3)/1(4) – references to obsolete law

Section 1(3) and (4) provides:

“(3) A service provider shall not be treated as conducting online gambling by reason only that, in the course of a business, he handles electronic communications on behalf of another person with whom he is not associated.

(4) In subsection (3)-

'associated' shall be construed in accordance with section 8(5) and (6) of the Fair Trading Act 1996;

other expressions have the same meanings as in section 10 of the Electronic Transactions Act 2000.”

Sections 8(5) and (6) of the Fair Trading Act 1996 have been repealed by the Fair Trading (Amendment) Act 2001 s.3 rendering these references obsolete.

The definition that previously pertained may need to be explicitly written into OGRA or the equivalent, contemporary definition of 'associated' may need to be identified and the reference modified.

C2. GBL s.35 – references to obsolete law

s.35 (Public Lotteries) states:

“A lottery promoted by the Treasury in accordance with the Public Lotteries Act 1981 is not an unlawful lottery.”

The Public Lotteries Act 1981 no longer appears on the statute book. This section needs to be removed or updated with a reference to the Act that replaced the Public Lotteries Act 1981.

C3. OGRA – s.3(1)(d) – incorrect reference to another act

S.3(1)(d) states:

“A contract to which section 46 of the Financial Services Act 2008 applies;”

This should in fact refer to section 47, not section 46.

Note that a corrigendum has been requested by the FSC and issued in respect of this item (see appendix B) for their act.

C4. GBL – s.33A and s.33B – British society lotteries

These sections refer to British society lotteries which were recognised by a 1976 Act of Parliament. The 1976 Act was repealed by a 2005 Act which came into force in 2007. Consequently, all references to the 1976 Act are now obsolete.

It is ongoing policy that British society lotteries be allowed to operate within the Isle of Man.

A revision is therefore required to the GBL to create a situation whereby a person who has been licensed by the UK Gambling Commission to operate a lottery as described in s.14 of the UK's Gambling Act 2005 (<http://www.legislation.gov.uk/ukpga/2005/19/section/14>) may conduct such a lottery in the Isle of Man provided they adhere to the requirements of the UK law and its attendant regulations.

C5. OGRA – s.5(7) – no refund upon revocation

It is clear from OGRA how an unused portion of a licence fee should be treated (i.e. no refund is payable) when the licence is surrendered by the licensee.

It is less clear what rights to a refund a licensee has if the licence is revoked by the Commission.

The GSC wishes it to be clear that any unused portion of a licence that has been revoked cannot be refunded either.

C6. OGRA – s.9(7) – no charge for changes to licence

Section 9(7) of OGRA requires that a licensee be charged for changes to the licence.

The GSC does not wish to charge for changes to the licence so will seek to have this clause repealed.

C7. GBL & OGRA – Clarification of gambling in territorial waters and airspace

The Commission wishes to clarify that any gambling that occurs in the territorial waters of the Isle of Man or in its airspace (but not while docked or landed) falls outside the scope of the Commission's remit unless the gambling that occurs is not incidental to the purpose of the vehicle.

For example, the Commission is not interested in:

Gambling as part of an in-flight entertainment system;

A casino operated on a cruise ship;

Fruit machines operated on board a ferry

The Commission would however wish to interdict:

A ship which regularly embarked Isle of Man residents and offered a casino in Douglas Bay (a sort of modern-day Mississippi Riverboat Casino.)

C8. GBL & GA – Terrestrial terminals served by telecommunications

OGRA currently includes any gambling which takes place by use of Isle Of Man telecommunications infrastructure. Exemptions exist in the Online Gambling (Exclusions) Regulations 2010 (SD909/09). Activities excluded under these regulations are beyond licensing and duty.

Equipment exists in the sector which consists of a physical, public terminal to which a game may be provided either (a) as a download, (b) as a partial download or (c) in real time.

For example:

The terminal's owner recognises that gamers are becoming jaded with the current selection of games so he organises for a new suite of games to be downloaded on to the terminal. Once the games are downloaded, the terminal's software runs the games in isolation of the download server;

The terminal's on board software carries generic software sufficient to provide the framework for a game but new graphics are used to replace old ones from time to time to give the illusion of new games to players;

Either: the terminal is just a conduit which allows the player to conduct a game remotely on a server elsewhere and the function of the terminal is simply to capture the player's inputs and display outcomes resolved elsewhere

Or –

The terminal has a hard- or firm-coded game installed but relies on an external input such as a random number from a remote location.

In all cases, the Commission wishes to exclude these games from the provisions of OGRA but retain them as part of the GBL/GA so that their use can be controlled, licensed and subjected to duty.

In doing so, it is hoped that such machines can be subjected to a new regulatory framework discussed earlier in this document which separates the restrictions, parameters, licence fees and duty arrangements from the primary legislation and allows these elements to be defined in secondary legislation.