

A CONSULTATION DOCUMENT



Isle of Man Gambling Supervision Commission

GAMBLING (ANTI-MONEY LAUNDERING AND COUNTERING THE FINANCING OF TERRORISM) CODE 2019

[February 2019]

CONSULTATION PAPER – Gambling (AML/CFT) Code 2019

This consultation paper is issued by the Isle of Man Gambling Supervision Commission (the "GSC") in conjunction with the Department of Home affairs and the Isle of Man Treasury. The GSC is the regulatory body for gambling business in the Isle of Man which includes responsibility for overseeing the sector's compliance with anti-money laundering and countering the financing of terrorism ("AML/CFT") obligations.

The purpose of this consultation is to obtain views in relation to a new Gambling (AML/CFT) Code which applies to online gambling, casino and bookmaker businesses.

Please note that the Isle of Man Financial Services Authority is also conducting a consultation in relation to AML/CFT which includes –

- a) an updated version of the Anti-Money Laundering and Countering the Financing of Terrorism Code which applies to businesses in the regulated sector other than online gambling, casino and bookmaker businesses; and
- b) revisions to Schedule 4 to the Proceeds of Crime Act 2008 (the Business in the Regulated Sector Order) which lists businesses that are in the regulated sector and therefore obliged to comply with the relevant AML/CFT Codes. Please note the proposed addition of an exemption (at paragraph 14) for online gambling business being carried out by means of a software supplier licence or a token-based software supplier licence.

The closing date for comments is **15 March 2019**.

Please see section 2 of this document for details of the process and how to submit your comments.

The GSC recognises guidance on how to apply the provisions of the Code is as important as the Code itself and, as such, is committed to consulting on revisions to the AML/CFT guidance published by the GSC on its website in the near future.

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Glossary

Term	Meaning in this document
AML	Anti-Money Laundering
CDD	Customer due diligence
CFT	Countering the Financing of Terrorism
EDD	Enhanced customer due diligence
FATF	The Financial Action Task Force
FIU	Financial Intelligence Unit
FIU Act	Financial Intelligence Unit Act 2016
FSA	Isle of Man Financial Services Authority
GSC	Isle of Man Gambling Supervision Commission
MONEYVAL	The Council of Europe's Committee of Experts on the evaluation of AML/CFT measures
ML	Money Laundering
PEP	Politically exposed person
TF	Terrorist Financing
The 2013 Code	The Money Laundering and Terrorist Financing (Online Gambling) Code 2013
The 2015 Code	The Anti-Money Laundering and Countering the Financing of Terrorism Code 2015 (as amended 2018)
Other AML Codes	The 2015 Code plus revisions to that Code and a new Code for specified non-profit organisations that are being consulted upon by the FSA.

1. Executive summary

The proposed new Gambling (AML/CFT) Code 2019 encompasses actions identified by MONEYVAL in their evaluation of the Island plus amendments identified by the GSC's officers over time through supervisory activities and discussion with the gambling sector.

Currently, online gambling operators must comply with the 2013 Code and casino and bookmaker businesses must comply with the 2015 Code (as amended 2018).

The proposed new Gambling (AML/CFT) Code 2019 will apply to online gambling, casino and bookmaker businesses.

Prior to this consultation being issued, the GSC undertook an informal consultation exercise including meetings with industry representatives and the views expressed have been taken into account in preparing this consultation.

The new Code needs to be in force by July 2019 in order to coincide with the Island's next follow-up report to MONEYVAL and its consideration at the July 2019 plenary.

The legislative ownership of the Code being consulted on belongs to the Isle of Man Department of Home Affairs, however, work on preparing the legislation has been delegated to the GSC which has worked closely with the FSA which is consulting on revisions the 2015 Code and a new Code for Specified non-profit organisations¹.

2. Consultation process

The consultation will remain open for a period of 4 weeks. Following the consultation, the GSC will make a response document available to the public summarising the views expressed and any actions taken as a result.

A list of persons consulted with can be found at Appendix A of this document. If there is anyone not on the list who you think should be consulted, please feel free to forward a copy of this document to them, or contact the officer named below.

The Code will be made under Section 157 of the Proceeds of Crime Act 2008, which requires that the Code be laid before Tynwald. The GSC aims to invite the Department of Home Affairs to do this at the May 2019 sitting of Tynwald with the Code coming into effect in 1 June 2019.

¹ A 6 week consultation launched 13 February

Comments should be made in writing by post or by email (our preference) to the following –

Helen Ault
Director of Licensing and Compliance
Gambling Supervision Commission
Ground Floor, St Georges Court, Myrtle St.
Douglas, Isle of Man, IM1 1ED
helen.ault@gaming.gov.im

The consultation will remain open until the close of business on:

15 March 2019

When submitting your comments, please indicate whether you are responding on behalf of an organisation.

For hard copies, please contact the Gambling Supervision Commission by telephoning 01624 6943331.

Electronic copies of this document are also available at –

<https://www.gov.im/about-the-government/statutory-boards/gambling-supervision-commission/>

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

Unless specifically requested otherwise, any responses received may be published either in part or in their entirety. **Please mark your response clearly if you wish your response and/or name to be kept confidential.** Confidential responses may be included in any statistical summary and numbers of comments received.

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 the proposed Code. In any consultation exercise the responses received do not guarantee changes will be made to what has been proposed.

The GSC recognises guidance on how to apply the provisions of the Code is as important as the Code itself and, as such, is committed to consulting on revisions to the AML/CFT guidance published by the GSC on its website in the near future.

3. Proposals

It is proposed that the 2013 Code is revoked and replaced with the proposed new Gambling (AML/CFT) Code 2019 that will apply to online gambling, casino and bookmaker businesses.

The key requirements of this Code / changes to the 2013 Code to which the GSC wishes to draw your attention are –

GENERALLY

- Each paragraph clarifies the requirement and when it applies, what to do if the requirement is not met plus any requirement for recording actions taken.
- Paragraph names have been added in brackets to cross-references.
- The language used, wherever possible, is consistent with the FATF Recommendations and other AML Codes.

PART 1 - INTRODUCTORY

Paragraph 3 – Interpretation:

“Beneficial owner” has been amended and now includes the natural person on whose behalf a transaction is being conducted. The GSC intends to clarify in guidance (which it is committed to consulting on in the near future) that this relates only to customers placing bets on behalf of their own customer or other person and does not relate to the provision of games, services etc. from one business to another.

The terms “customer”, “ongoing customer relationship” and “occasional transaction” are used for consistency and clarity, removing the 2013 Code terms “participant” and “business participant”.

“gambling business in the regulated sector” refers to draft Schedule 4 to the Proceeds of Crime Act 2008 being consulted upon by the FSA.

“Ongoing customer relationship” refers to businesses conducted by online gambling operators and casinos where the customer is an account holder.

“Occasional transaction” describes activity conducted by walk-in customers where no account is opened for the customer, such as transactions with a bookmaker.

Please note that no definitions for “source of wealth” or “source of funds” have been added to this consultation draft but have been included in the FSA consultation on the other AML Codes. A question regarding this approach is included at part 4 of this document.

PART 2 – GENERAL REQUIREMENTS

Paragraph 4 – Procedures and controls:

All procedures must be established, recorded, maintained and operated. Procedures must also be risk-based, group wide (please see paragraph 31) and approved by senior management.

All operators are required to register on the FIU's Themis reporting system and ultimate responsibility for customer due diligence sits with the operator regardless of any outsourcing of functions.

Paragraph 5 – Prohibitions:

Terrestrial gambling operators (casinos and bookmakers) are prohibited from establishing relationships with, or carrying out transactions for, customers that are acting by way of business.

Online gambling operators are prohibited from carrying out occasional transactions.

PART 3 – RISK-BASED APPROACH

Paragraph 6 – Business risk assessment:

Is a new requirement in the Code having previously been in GSC guidance only.

The guidance requirement has been amended to include requirement to consider the Island's (and other relevant jurisdictions) National Risk Assessment(s).

Paragraph 7 – Technology risk assessment:

Provides a clear requirement to undertake a risk assessment in the Code; it previously required only procedures and controls to prevent misuse. The proposed wording also clarifies when a risk assessment is needed and relevant factors to consider.

Paragraph 8 – Customer risk assessment:

Applies to all ongoing customer relationships and to occasional transactions that exceed the €3,000 threshold (stakes or withdrawals, except re-staked winnings).

A list of matters that may pose a higher risk and a shorter list of matters that do pose a risk have been included. The second list consists only of customers in a List A jurisdiction (currently Iran and the Democratic People's Republic of Korea) or that are subject of an AML/CFT warning. These customers require senior management approval.

The list of factors that may be high risk includes matters arising from recent FIU typologies.

PART 4 – CUSTOMER DUE DILIGENCE

Paragraph 9 – Application of customer due diligence:

Clarifies that the requirements of this part of the Code applies to all ongoing customer relationships and to occasional transactions that exceed the €3,000 threshold (stakes or withdrawals, except re-staked winnings).

Paragraph 10 – Occasional transactions and new customer relationships:

Requires an operator to identify the customer, the source of funds and whether the customer is acting by way of business. If acting by way of business, further information plus verification of identity is required at that stage. If not, the €3,000 threshold (deposits and withdrawals) and the requirements of paragraph 11 apply.

Paragraph 11 – Verification of identity:

As with paragraph 10, the wording “produce satisfactory evidence” has been replaced with “verify...using reliable, independent source documents, data or information”. This means that the Code no longer requires a customer to produce physical documentation, instead other means to verify identity could be considered and the GSC plans to consult on detailed guidance in the near future on how this can be implemented in practice.

Paragraph 12 – Continuing customer relationships:

Requires checks of existing customer to ensure that they are in accordance with paragraphs 10(3)(c) and 11.

Paragraph 13 – Politically exposed persons:

Provides a clear requirement to check whether the customer is a PEP (which is a high risk factor) and provides requirements for PEPs that are separate to enhanced customer due diligence requirements for higher risk PEPs. The PEP definition has been updated and requirements only apply to foreign PEPs and higher risk domestic PEPs.

Paragraph 14 – Enhanced customer due diligence:

Applies to high risk customers and in the event of unusual activity (a defined term). It now includes “the undertaking of further research, where considered necessary”. This could include actions such as undertaking negative press/adverse media checks and will be clarified in guidance.

Paragraph 15 – Ongoing monitoring:

Applies to high risk customers and in the event of unusual activity (a defined term). Requires risk-based monitoring of CDD and transactions plus a new Code requirement to determine whether the customer or known beneficial owner appears on the sanctions list.

PART 5 – RECORD KEEPING AND REPORTING

Paragraph 16 – Record keeping:

Clarifies the information, documents and records that must be kept.

Paragraph 17 – Record retention:

Clarifies that the requirement also applies to former operators. The retention period has been reduced from 6 years to 5 years in line with other AML Codes.

Paragraph 18 – Format and retrieval of records:

Also clarifies that the requirement also applies to former operators and sets out the timeframe within which records must be retrieved in depending on their format and location.

Paragraph 19 – Registers of disclosures:

Has been extended to included internal, external and other disclosures. Other disclosures include those made under Section 24 of the FIU Act.

Paragraph 20 – Register of ML/FT enquiries:

Requires records to be kept of enquiries from competent authorities.

Paragraph 21 – Money Laundering Reporting Officer:

Requires an MLRO to be a senior staff member, direct access to the board and sufficient time and resource. It also states that a Deputy may be appointed.

Paragraphs 22-24 – Reporting Procedures, Internal disclosures and external disclosures

Now include reference to disclosures made under S.24 of the FIU Act and a provision that EDD is not required if likely to tip-off the customer.

PART 6 – STAFFING, TRAINING AND MONITORING COMPLIANCE

Paragraph 25 – Monitoring and testing compliance:

Creates a new requirement for a suitable person (an "AML/CFT Compliance Officer") to take ownership of the monitoring and testing function, including periodic reports to the board. That person (which guidance will clarify could

also be the MLRO) is also required to be a senior staff member, have access to the board and sufficient time and resource.

Paragraph 26 – New staff appointments

Requires procedures to enable an operator to be satisfied of the integrity of new staff appointments.

Paragraph 27 – Staff training

Sets out the staff members that must be trained and lists the required contact of training. It also now clarifies that training on changes to AML/CFT legislation should be provided within a reasonable timeframe.

PART 7 – MISCELLANEOUS

Paragraph 28 – Fictitious, anonymous and numbered accounts:

Requirement from the 2013 Code has been extended to include numbered accounts. Clarifies that this requirement does not apply to occasional transactions under the €3,000 threshold.

Paragraph 29 – Deposits and withdrawals

Based on paragraph 4 of the 2013 Code and prohibits cash deposits in online gambling and winnings being paid to third parties.

Paragraph 30 – Transfer of a block of business

This is a new paragraph and provides simplified CDD measures in respect of customers acquired from another entity. CDD may be provided to an operator by the vendor provided that certain conditions are met.

Paragraph 31 – Gambling groups, foreign branches and subsidiaries

This is a new paragraph in line with R.18 of the FATF Recommendations. Where an operator is the head office of a group, it is required to implement group-wide procedures in line with the Code and, where this is not possible, the operator must advise the GSC.

PART 8 – OFFENCES AND REVOCATIONS

Paragraph 32 – Offences:

Updated in line with the standard scale for criminal financial penalties. MLRO (and Deputy), Designated Official and Operations Manager added to the list of officers liable for prosecution under the Code.

Paragraph 33 – Revocations:

Revokes the 2013 Code.

4. Questions

Question 1

Do you have any comments regarding the layout and order of the provisions of the proposed Gambling (AML/CFT) 2019 Code?

Question 2

Do you have any comments in relation to the content of the proposed Gambling (AML/CFT) 2019 Code?

Question 3

Do you consider that any of the new requirements proposed would have a significant negative impact on your business/aspect of your business? If so, please provide details on the nature and extent of impact.

Question 4

Are there any specific areas of the Code where you would benefit from the development of (and consultation on) additional guidance?

Question 5

The FSA consultation on the other AML Codes includes the addition of definitions for "source of funds" and "source of wealth" based on a 2013 FATF guidance paper on Recommendations 12 and 22 (Politically exposed persons).

The FSA consultation draft definitions are -

"source of funds" means the origin of the particular funds or other assets involved in a business relationship or occasional transaction and includes the activity that generated the funds used in the business relationship or occasional transaction, and the means through which the funds were transferred; and

"source of wealth" means the origin of a customer's entire body of wealth and includes the total assets of the customer.

GSC guidance currently states –

Source of funds...describes a player's immediate source of funds (i.e. the deposit method). This is required for all participants and business participants to undertake a Code-compliant customer risk assessment

Source of wealth...is distinct from source of funds and describes the origins of a person's financial standing or total net worth (i.e. the activities that generated a person's funds and property).

The GSC seeks views of what impact the addition of either definition to the Gambling (AML/CFT) Code 2019 may have.

Please note that source of funds is required for all customers regardless of their transactional activity or risk rating and reasonable measures to establish source of wealth is required for foreign PEPs, higher risk domestic PEPs or any other higher risk customer.

Issued on 15th February 2019

Appendix A; List of stakeholders consulted

Members of Tynwald

The general public of the Isle of Man

Central Government via chief officers

The Isle of Man Law Society

The Isle of Man Chamber of Commerce

GSC licence, permit and certificate holders

The Money Laundering Reporting Officers Forum

The Government's AML/CFT Technical Group

The Manx e-Gaming Association