

# **Gambling Supervision Commission**



## **Gambling (Anti-Money Laundering and Countering the Financing of Terrorism) Code 2019**

### **Consultation Responses**

**3rd April 2019**

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## **1. Introduction**

On 15<sup>th</sup> February, the Gambling Supervision Commission ("GSC") published a 4 week consultation on the draft Gambling (Anti-Money Laundering and Countering the Financing of Terrorism) Code 2019. The primary driver for the new Code was to meet the international standards, the FATF Recommendations and to address action points included in the Island's MONEYVAL Mutual Evaluation Report.

It is planned that the Code will be laid before Tynwald in May so that it may come into operation prior to the July MONEYVAL plenary at which the Island's progress will be reviewed.

The Code also included some changes identified by the GSC. The main GSC identified change was the removal of terrestrial gambling operators (casinos and bookmakers) from the Anti-Money-Laundering and Countering the Financing of Terrorism Code 2015 and into the draft Code which will apply to terrestrial and online gambling operators.

## **2. Informal pre-consultation exercise**

An informal consultation exercise began in June 2018 when the GSC emailed online gambling Money Laundering Reporting Officers and the Designated Officials of the casino and bookmakers with a list of matters that would likely be included in the draft Code. The GSC drew particular attention to the areas it considered as potentially having significant impact on businesses.

In October 2018 the Gambling Supervision Commission emailed an update to the MLROs and Designated Officials with an overview of responses received so far.

The GSC also provided updates at 5 meetings of the Online Gambling Money Laundering Reporting Officers Forum since January 2018. Additionally, individual meetings were held between the GSC and a number of gambling operators to discuss the potential changes.

## **3. Meetings during the formal consultation exercise**

The GSC contacted its casino, bookmaker and online gambling licence holders to draw their attention to the consultation and also offer group or individual meetings during the consultation period. There was insufficient interest to warrant a group, however 9 individual meetings were held.

## 4. Formal consultation responses

A total of 20 responses were received to the consultation. Two entities submitted two responses each and a small number of responses asked questions about the current or draft Code but did not express any views on the proposals.

PLEASE NOTE: The GSC will endeavour to consider any additional responses received after the closing date. However, this consultation response document will not be updated with any late responses.

### 4.1 General comments

**The consultation sought views regarding the layout and order of the provisions of the draft Code.**

#### Views of Respondents

Respondents were generally supportive of the proposals. 5 provided positive comments regarding the layout and order. One commented that it was good to see the draft Code aligned with the FSA's draft Code (which applies to businesses in the regulated sector other than gambling operators) wherever possible.

One commented that the Code was *"somewhat outdated and would benefit from a refresh"*.

One respondent welcomed the GSC's *"pro-activity in updating the Code in response to findings from supervisory visits and other engagement with operators"*

The addition of the terrestrial gambling sector into the draft Code was also welcomed.

#### The Commission's position

Comments noted.

### 4.2 GSC Guidance

**The consultation asked Respondents to highlight areas of the draft Code that would benefit from the development of (and consultation on) additional guidance.**

#### Views of Respondents

Respondents were pleased that the GSC intended to also consult with gambling operators on any guidance on the Code and the opportunity to raise areas of particular interest.

One respondent comments that *"the guidance written in December 2016 was excellent"* and that *"a similar document reflective of the requirements of this new 2019 Code would be ideal; with a particular focus on 'new terms' and expectations"*.

Respondents listed many areas that they felt would benefit from additional guidance. The following areas were most commonly raised –

- a) How to apply "group-wide" procedures including how to determine which is the "higher standard" jurisdiction;
- b) Which parts of the Island's National Risk Assessment should be considered and what are "significant connections" to other jurisdictions;
- c) When and how to undertake risk assessments of new and developing technologies;
- d) Requirements for record-keeping in respect of customer risk assessments for lower or standard risk customers;
- e) What is considered "reasonable measures" in respect of enhanced due diligence or source of wealth, particularly where the customer has transacted only small amounts; and
- f) What are considered to be "high risk products" or "high net worth individuals".

### **The Commission's position**

The GSC welcomed the suggestions for guidance from respondents and aims to consult informally with its licenced operators on guidance in the near future.

Feedback on the Code requirements in respect of points a) and b) are also covered later in this document.

### **4.3 Views on the draft Code contents**

#### **The consultation sought comments regarding the content of the draft Code**

### **Views of Respondents**

For ease of reference, respondents on the content of the Code have been split into common themes with the Commission's position set out under each point. Please note that queries on the current and draft Codes have not been included.

#### General requirements

1. Three respondents welcomed the move from documentary evidence to verification of identity using independent, reliable, source information, documents or data.

➤ **Noted**

2. One respondent suggested that the occasional transaction definition (paragraph 3) could be amended to make clear up-front that this was in relation to terrestrial gambling activity.
  - The GSC will consider whether it can make clear early on in the Code that occasional transactions are for terrestrial operators only.
3. One respondent queried the application of the prohibition on accepting cash for online gambling activity (paragraph 29(1)) to licenced betting offices that may have online gambling as part of their gambling group.
  - The GSC is reconsidering this position.
4. One respondent commented that it would be challenging for a terrestrial operator to determine whether a customer was acting by way of business (paragraph 10(3)(c)).
  - The GSC understands that this could be challenging and suggests that the use of the term “the taking of reasonable measures” provides sufficient flexibility for instances where it cannot easily be determined.

#### Risk-based approach

5. Four respondents were not supportive of the inclusion of other jurisdictions National Risk Assessments (paragraph 6(3)(b)). One suggested that this should instead be a best practice requirement in guidance.
  - The GSC agrees with this suggestion. Reference to other jurisdictions’ NRAs will be removed.
6. One respondent commented that it was unclear what type of involvement of third parties was being referred to (paragraph 8(4)(d)).
  - The GSC has noted this area as one to explain clearly in guidance.
7. One respondent commented that whether customers were met face-to-face would not be applicable to online gambling operators (paragraph 8(4)(e)).
  - It should be noted that this requirement applies to both online and terrestrial gambling operators and also that some online gambling operators do meet their customers. Guidance will be provided regarding expectations for those that do not meet customers face-to-face.

#### Customer due diligence

8. One respondent commented that the nature and purpose of the relationship was self-explanatory (paragraph 10(3)(c)(ii)).
  - The GSC considers that it may be self-explanatory for some business models but not for others. For example this information would be required for VIP high roller clients or customers acting by way of business.

9. One respondent commented that verification of customer identity should be required at deposit only not deposit or withdrawal (paragraph 11(1)(b)).

- The FATF requirement applies to “transactions” which the GSC interprets as meaning both deposits and withdrawals. It should be noted that for customers who reach the withdrawal threshold but have already had their identity verified when they reached a deposit threshold, there is no requirement to obtain the verification a second time.

10. One respondent commented that a reasonable timeframe should be permitted to obtain/carry out verification once the qualifying transaction threshold is reached (paragraph 11(1)(b)).

- The FATF requirements dictate that verification should be undertaken before a transaction over the threshold is conducted. The enhancements to the Code allow new methods to obtain verification rather than the existing requirement for physical evidence, making it easier to comply, with minimal customer impact in most cases. Operators may wish to implement their own threshold at an earlier stage, so that a reasonable timeframe could be provided until such time that the Code threshold is met.

11. One respondent commented that the requirement to verify the customer should be applied to customers that reach the threshold after the Code is in force and not be applied retrospectively. (paragraph 11(1)(b)).

- The GSC agrees that to require verification of all customers who historically met the threshold would not be practicable. Instead, the GSC would expect this to be done when the threshold is met once the Code is in force or at trigger event such as an account review, unusual transaction, etc.

12. Two respondents commented that a time period of 30 days should apply to the qualifying transaction threshold (paragraph 11(1)(b)).

- The GSC agrees with this suggestion. Reference to the 30 day period will be added to the Code.

#### Politically exposed persons and enhanced due diligence

13. Two respondents were not supportive of the requirement to establish the source of wealth for all foreign PEPs. One also commented that senior management approval was also not proportionate for customers transacting low amounts. One commented that source of wealth for foreign PEPs should only be required where the customer is also considered high risk or amend the domestic PEP definition to include UK resident customers (paragraph 13(4) / paragraph 3)).

- The GSC understands that there may be instances where establishing the source of wealth and seeking management approval may not be proportionate. The GSC will consult on this and publish guidance on expectations for PEPs who transact low volumes. For those under the qualifying transaction threshold a more flexible approach may be



taken such as a blanket approval rather than a requirement to refer each and every instance to management. Consideration will be given to whether “domestic” could be extended to UK residents.

#### Record-keeping

14. One respondent queried the legal vires of applying record-keeping requirements to former operators. Two commented that the application of these requirements to former operators would be unworkable. (paragraph 17(1))

- It is the GSC’s view that the current Code requirement applied to former operators, and that the change is for clarification only. This approach has been approved by HM Attorney General’s Chambers. The GSC has noted the comments on the practical and cost challenges for former operators and will consult on guidance in the near future.

15. One respondent commented that “pertinent correspondence” should be added to avoid irrelevant records being kept. (paragraph 17(1))

- This wording is in line with FATF Recommendations. Guidance will be provided to clarify that the provision relates only to AML/CFT related correspondence.

16. One respondent commented that 7 days may not be possible for large volumes of records to be obtained. (paragraph 18(2)).

- This requirement remains unchanged from the current Code however the GSC has noted to add to guidance what the expectation would be for very large volumes of records.

#### Unusual and suspicious activity

17. One respondent welcomed the addition of term “unusual activity”. (paragraph 3 and paragraph 23(2))

- Noted

18. Two respondents suggested that requiring EDD in the event of unusual or suspicious activity may not be appropriate. One instead suggested that the matter should be considered by the MLRO. (paragraph 23).

- The GSC considers that the EDD requirements are drafted so that flexibility is provided and additional measures may be considered or undertaken only where considered necessary. The suggestion to refer unusual activity to the MLRO may be appropriate for some entities but not others and the GSC would have no issue with operators referring to MLRO if they considered it appropriate.

19. One welcomed the inclusion of consideration on whether the conducting of EDD may tip off a customer. (paragraph 23(1)(a)).

- Noted

## MLRO and AML/CFT compliance requirements

20. Five respondents consider that the requirements for group-wide procedures were unclear in respect of how they would be applied for larger and complex structures and could not therefore provide their views on the impact of the requirement. (paragraph 31).

- The GSC has reconsidered this paragraph in light of the feedback received and considers that the requirement could be simplified so that they apply only to the branches and subsidiaries of an operator. The Code will be updated.

21. One respondent was not supportive of the requirement for group-wide procedures and considered that this could discourage business from establishing or continuing in the Island. (paragraph 31).

- The GSC considers that the simplification above would address this concern.

22. One welcomed the new requirement for group-wide procedures. (paragraph 31).

- Noted

23. Two welcomed the addition of the AML/CFT Compliance Officer role. (paragraph 25(3)).

- Noted

24. One was concerned over how the AML/CFT Compliance Officer requirement could be proportionate for smaller businesses. (paragraph 25(3)).

- The addition of the AML/CFT Compliance Officer provides a named person responsible for monitoring the AML/CFT function. For smaller organisations this does not need to be their only role provided that the requirements are met.

25. One suggested that the GSC should require MLROs and AML/CFT Compliance Officers to hold relevant professional qualifications. (paragraph 21 and 25(3)).

- The GSC has noted this suggestion for consideration in future. Any amendment would come under the gambling Acts (such as the Online Gambling Regulation Act) and would be subject to public consultation.

26. One welcomed the additions to the list of persons liable for Code breaches. (paragraph 32(5)).

- Noted, however the GSC intends to revert to the current position in line with the FSA Code.

#### 4.4 Requirements that would have negative impact, if implemented

**The consultation asked Respondents to highlights any new requirements that may have a significant negative impact and to provide details of the nature and extent of impact.**

##### Views of Respondents

27. One respondent commented that there would be negative impact if the group-wide procedures were required for all under the head office as opposed to branches and subsidiaries of the Isle of Man licence holder only. (paragraph 31).

➤ This has been addressed under point 20 above.

28. Two respondents considered that the requirement for record keeping in relation to former operators would have significant negative impact as failed operators would not have the capital required in order to pay for storage. (paragraph 18(1)).

➤ This has been addressed under point 14 above.

29. One commented that requiring enhanced due diligence for unusual activity would have significant negative impact. (paragraph 15(3)).

➤ This has been addressed under point 18 above.

30. One respondent commented that any requirement to obtain verification of identity who had exceeded €3,000 prior to the Code would have significant impact due to the volume of customers and practical challenges.

➤ This has been addressed under point 11 above.

31. 16 respondents stated that the source of funds definition included in the FSA consultation would have significant negative impact, if applied to gambling operators.

➤ Please see below for further detail.

#### 4.5 "Source of funds" and "Source of wealth"

**The consultation asked Respondents to highlights any new requirements that may have a significant negative impact and to provide details of the nature and extent of impact.**

##### Views of Respondents

16 respondents stated that the source of funds definition included in the FSA consultation would have significant negative impact, if applied to gambling operators.

Four of those included in their response detailed information to demonstrate the impact that this would have on their costs to meet their AML/CFT obligations. In each case they stated that the increased cost plus impact on customers would likely result in a loss of all or part of their business and went on to provide detailed information showing the impact on gaming duty, licence fees, potential loss of jobs and business for support services such as hosting providers, banking and recruitment.

The views of the respondents can be summarised as follows –

- Only one respondent was not supportive of the source of wealth definition – this is broadly the same as the one included in current GSC guidance.
- Respondents suggested that the source of funds may be appropriate for finance business but not for gambling operators (typically low value, high volume).
- There is no clear requirement to adopt this definition and no other jurisdiction requires this.
- The current source of funds definition in guidance remains appropriate for gambling operators.
- The new source of funds definition would not be proportionate for standard risk customers of gambling operators and is not in keeping with a risk-based approach. Source of wealth is already required for higher risk customers.
- Business will be lost to other jurisdictions as others do not require this. Operators will have to consider re-locating.

### **The Commission’s position**

The GSC wishes to thank those who responded, particularly those who took the time to detail the likely impact on their business. The GSC’s position is that “source of funds” and “source of wealth” definitions remain in guidance and unchanged from the current definitions.

## **5. Changes being considered**

Based on this consultation-

<b>Paragraph Ref</b>	<b>Paragraph Name</b>	<b>Amendment</b>
3	Interpretation	Reintroduce the 30 day time period to the qualifying transaction threshold.
3	Interpretation	Clarify that occasional

		transactions do not apply to online gambling operators.
3	Interpretation	Consideration being given as to whether "domestic PEP" could include UK residents.
29	Deposits and withdrawals	The GSC is reconsidering the prohibition on cash for online gambling deposits in line with international standards and industry practices.
31	Gambling Groups, foreign branches and subsidiaries	Simplify the requirement by removing reference to head office. Clarify that the requirements apply only to foreign branches and subsidiaries of the IOM licenced operator.
6	Business risk assessment	Remove reference to other jurisdictions' national risk assessments. Require consideration only of relevant parts of the IOM assessment.
17	Record retention	Wording at sub-paragraph (1) and (2) amended for clarity.

Based on responses to the FSA consultation or other matters identified by the GSC-

<b>Paragraph Ref</b>	<b>Paragraph Name</b>	<b>Amendment</b>
3	Interpretation	Separate the definitions for "director" and "officer".  Consider using consistent language throughout to describe the persons responsible for managing an operator rather than senior management/directors/board of directors.
23	Internal disclosures	Consider removing duplication between this paragraph and paragraph 15 (Ongoing monitoring)
32	Offences	MLRO, DO and OM removed from list of officers in line with FSA Code.

Please note that this list is not exhaustive and may be subject to some change.