

Gambling Supervision Commission



Gambling (Anti-Money Laundering and Countering the Financing of Terrorism) Bill 2017

Consultation Responses

26th June 2017

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1. Introduction

On 11th May 2017, the Gambling Supervision Commission (GSC) published a consultation on the draft Gambling (Anti-Money Laundering and Countering the Financing of Terrorism) Bill 2017 ("the Bill"). The Bill seeks to provide the GSC with clear powers in law to conduct supervisory oversight of the gambling sectors compliance with Anti-Money Laundering and Countering the Financing of Terrorism (AML/CFT) legislation and to provide a range of effective and proportionate sanctions for non-compliance in line with international standards.

The consultation ended on 8th June 2017 and the GSC would like to thank all those who took the time to respond or attend the briefing sessions.

This document provides a summary of views expressed, responses to those views and an overview of any resulting amendments to the Bill.

For the purposes of the document and to ensure any contributions do not compromise requested anonymity, views and comments have been paraphrased, but express the same sentiment.

2. Pre-Consultation Exercise

In January – ahead of the formal consultation on the draft Bill in June - the GSC undertook an informal pre-consultation exercise on the concept of acquiring new powers.

Responses to this informal pre-consultation exercise can be split into two categories:

- a) In favour of the Bill with an interest in how the powers will be applied;
- b) Not against the Bill but noting that there is an Isle of Man trend of increasing regulatory burden.

In order to address potential concerns in relation to those responses that fell into category a), the GSC committed to consulting on an Enforcement Strategy document in early 2018 that will provide further detail on when the GSC would seek to use enforcement and sanctioning powers as well as proposing calculations and formulae for any monetary sanctions issued.

In order to address concerns in relation to those responses that fell into category b), the GSC advised that it periodically reviews its management of risk and modifies its regulatory requirements when the risk has been eliminated or reduced. It also recognised that the AML/CFT supervisory regime had imposed a regulatory burden on the sector.

3. Consultation Briefings

During the formal consultation, briefing sessions were held to allow industry to comment and ask questions face to face.

The briefings were held on 18th May 2017 and 1st June 2017. The discussions at the briefings included:

- a) The background and rationale for the Bill;
- b) How the GSC intended to use the powers made under the Bill and whether its approach to regulation will change;
- c) The general trend of increasing compliance burden;
- d) Comparisons of the new powers and those available to other jurisdictions' regulators;
- e) Technical feedback on the wording of the clauses;
- f) The policy for cooperation between government departments on AML/CFT matters.

4. Formal Consultation Responses

Eight responses were received before the formal consultation closed.

4.1 General comments

Comments stated that the background and rationale for the Bill was clear and well understood and that the proposals seemed balanced. One respondent commented that the Bill provides a level of comfort to compliant operators.

The GSC's proposal to consult in early 2018 on the enforcement strategy was well received. One respondent indicated that the way the GSC approached the consultation - and regulatory supervision in general - was beneficial to the Isle of Man's gambling sector.

Several respondents suggested that some areas of the Bill could be condensed and that the clauses could be placed in a more logical order.

Comments were received highlighting general concerns about steadily increasing compliance burdens. The comments were not specifically targeted at the Bill but at regulatory burdens on business in the Island generally.

4.2 Comments regarding processes and procedures

Several respondents queried how the powers would be used in practice such as the timescale for written directions and where prohibitions would be published.

Such matters will be included within the GSC's enforcement strategy which will be consulted upon in early 2018.

4.3 Comments regarding specific clauses of the Bill

4.3.1 Interpretation

During the consultation, the Isle of Man Gambling Supervision Commission (The Commission) received a number of responses from respondents and reacted to those responses by either noting them or accepting them and modifying the Bill as a result.

The Bill provided definitions for terms used within the Bill.

The Respondent's Views

Two respondents suggested that the term "staff member" in relation to obligations to assist the GSC with inspections was not sufficiently broad.

Two suggested that the terms "senior manager" and "controller" should be defined.

One suggested that "authorised person" should be defined.

The Commission's Position

A definition of "staff member" is to be added to the relevant clause to clarify that this includes a director, a manager, an employee or a worker, and a person who performs for a service provider a role performing an equivalent function.

Definitions for "senior manager" and "controller" are to be added to the Bill in line with those used by the GSC for the purposes of fitness and propriety checks made by the GSC under the Gambling Acts.

A definition for "authorised person" has been added to clarify that certain of the powers under the Bill may be exercised by a person authorised in writing by the Commission (e.g. GSC staff members)

4.3.2 Power to restrict holders of permits or licences

The Bill provided the GSC with the power to restrict all or part of a bookmaker's activities in relation to AML/CFT compliance failings.

The Respondent's Views

One respondent suggested that clarification should be added that all or part of the activities may be restricted.

The Commission's Position

The GSC agreed that the intention is to restrict all, or part, of the activities and the Bill is to be amended to reflect this.

4.3.3 Licence conditions

The Bill provided the GSC with the powers to restrict Online Gambling and Casino licences for AML/CFT reasons at any time.

The Respondent's Views

One respondent suggested that the clause be broadened allow new conditions to be added in addition to the power to amend existing conditions and that when this was done, that notice should be provided to the operator to allow the new condition to be queried.

The Commission's Position

The GSC agreed that powers to add new licence conditions would also be helpful and that notice should be given. The GSC considers that conditions that apply until the AML/CFT issues have been addressed would be sufficient. The Bill is to be amended to include that new conditions can be added and that notice is required.

4.3.4 Compliance returns

The Bill stated at clause 9 that failure to comply is a criminal offence and at clause 25 that a civil penalty cannot be applied, instead a written direction may be issued.

The Respondent's Views

Two respondents sought clarification regarding the penalties for failing to comply.

The Commission's Position

Upon further consideration, the GSC decided that failure to provide routine information is a minor infraction and that the administrative burden created by imposing a civil penalty would not be commensurate to the nature of the breach so the offence of failure to comply with a request for a compliance return to be submitted was removed from the Bill.

In the case of persistent failure to submit the required information, the GSC intends instead to issue a written direction requiring the operator to comply within a specified timeframe. Failure to comply with *that* direction would constitute an offence and a civil penalty could be imposed (effectively after multiple instances of failing to cooperate).

4.3.5 Powers to access premises and conduct inspections

The Bill provided the GSC with the powers to conduct inspections at an operator's premises to access and take copies of relevant information, including computer records.

The Respondent's Views

One respondent sought clarification whether inspections could be carried out at off-Island premises or the premises of Corporate Service Providers (CSPs)

The Commission's Position

In addition to the powers to inspect premises in which gambling is conducted, the Bill states that inspections may also take place at premises that are or have been used in connection with gambling. This would include CSPs providing services (directors, MLRO, etc.) to gambling licence holders. Overseas premises used in connection with GSC regulated operators could be inspected, as is the case under existing legislation although on-Island visits are usually sufficient.

4.3.6 Information sharing

The Bill included that information could be shared with parties listed in Schedule 2 of the Gambling Supervision Act 2010, the Financial Services Authority and that additional entities may be prescribed by Order.

The Respondent's Views

Three respondents queried whether the list of parties that the GSC may share information with should or would be amended via the Bill.

The Commission's Position

The GSC does not plan to extend the information sharing powers at this time. A detailed review and update of the Gambling Acts is scheduled for 2018/19 which will include a review of information sharing powers. If specific powers were required in the interim, the Bill does allow for an Order to be made specifying additional parties. Amendments to the Gambling Acts or the creation of an Order would be subject to consultation.

4.3.7 Power to require someone to attend before the Commission

The Bill allows the Commission to summon a person to appear before the Commission. This is done via the written authority of a justice of the peace. The person obliged to appear before the Commission is required to answer questions, furnish information and produce documents or copies of documents relevant to an investigation.

The Respondent's Views

One respondent queried whether, in line with other sanctioning powers, a person subject to such a request would be provided with the reason for the request.

The Commission's Position

The GSC agreed with the respondent that it was reasonable to provide the summoned person with information about why they were being summoned and the Bill will now include a requirement that a written notice of reasons be provided to a person required to appear before the Commission..

4.3.8 Direction to appoint an appropriate expert

The Bill states that the GSC may require an operator to appoint or contract an expert to remedy compliance failings regarding the AML/CFT legislation. The operator must appoint the expert based on their knowledge, expertise and ability to adhere to the timescale for the remedial action to be undertaken.

The Respondent's Views

Three respondents suggested that further detail regarding the suitability of the appointed professional should be further clarified. One respondent specifically suggested that such appointed professionals be drawn only from those able to demonstrate gambling-specific AML/CFT experience.

The Commission's Position

The GSC considers that the requirements should not be made more specific as the potential nature of the breach, organisation and remediation required may vary as requiring differing backgrounds and expertise of the experts. For example an appropriate expert could be an expert in IT, payments, virtual currencies, etc. rather than simply AML/CFT or gambling. The Commission noted the comments but did not modify the Bill.

5. Changes Made to the Bill

Revisions (other than minor amendments for consistency and clarity) made to the Bill following the consultation exercise are summarised below.

Part/Clause	Amendment
General	Bill condensed from 41 to 35 clauses.
General	In order to achieve consistency against other offences: Offences in connection with inspections and investigations - custody term reduced from 12 to 6 months for summary conviction. Power to request information: custody term added for summary conviction. Penalties for conviction on information added.
Interpretation	Addition of "authorised person", "senior manager" and "controller".
Compliance returns	Offence removed
Obligations for staff to assist	"Staff member" definition added.
Power to require persons to attend before the Commission, etc.	Statement of reasons for issue to be provided.
Directions	Clarification that other similar powers also constitute a "direction".
Sanctioning powers	Information sharing with the Financial Services Authority removed and instead added to the clause regarding Information Sharing.