

ISLE OF MAN
GAMBLING
SUPERVISION
COMMISSION

**The GSC's enforcement strategy for AML/CFT;
Advanced notice of consultation on the
enforcement policy for AML/CFT in 2018**

Version 0.3: May 2017

**This document accompanies the consultation on the
Anti-Money Laundering and Countering the Financing of
Terrorism (Gambling) Bill 2017.**

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1. About this document

This document accompanies the consultation on additional powers that the Gambling Supervision Commission (GSC) requires in order to meet its international commitments to combat money laundering and terrorist financing.

The document explains:

- The additional powers that are being sought;
- That these additional powers are typical regulatory powers;
- That the way the powers are applied can vary significantly between regulators, affecting the tone of regulation for a sector or nation;
- That the GSC has an enforcement strategy (when powers will be used) that is unlikely to change with the introduction of the additional powers – this strategy is detailed in this document; and
- That the GSC does not yet have an enforcement policy (how individual powers will be applied if they are used) but will be consulting separately, in 2018, on this policy.

2. Background information

The GSC supervises the gambling sector's compliance with Anti-Money Laundering and Countering the Financing of Terrorism (AML/CFT) legislation.

The core elements of this legislation are derived from the Financial Action Task Force's (FATF) AML/CFT Recommendations and there is an expectation from the FATF that every jurisdiction will implement these recommendations. Those jurisdictions that fall short of this expectation are identified during evaluation exercises and expected to improve.

One of the FATF Recommendations is that regulators have at their disposal a suite of proportionate sanctions in order to persuade, and if necessary prevent or punish those regulated businesses which do not apply the jurisdiction's AML/CFT legislation. These sanctions are known as "administrative sanctions". They may be applied even if money laundering or terrorist financing hasn't occurred; it is sufficient for a company to show that its compliance with AML/CFT law is deficient and that a subsequent risk of money laundering or terrorist financing could have arisen.

During the Isle of Man's National Risk Assessment exercise, the GSC identified that its then current suite of sanctioning powers was insufficiently varied, consisting of:

- Suspension or withdrawal of the licence; and
- A notice to remove an unsuitable person from an online gambling licence.

During the MONEYVAL evaluation exercise, the GSC further identified that it did not have sufficiently explicit powers to supervise AML/CFT matters in all gambling sectors that it regulated.

The GSC committed to acquiring a suite of powers and this document accompanies the consultation on the Bill which, if enacted will give the GSC those powers.

3. Administrative sanctions

The GSC recognises that the proposed legislative change in itself is likely to be uncontroversial – regulators typically have broadly the same powers irrespective of which sector they supervise or in which country they operate and the powers that the GSC is seeking to acquire are not novel or innovative but rather follow this standard national response to the FATF Recommendations typically giving regulators powers to:

- Inspect AML/CFT compliance in all relevant sectors;
- Issue findings formally;
- Issue warning notices;
- Publish findings in the public domain;
- Prescribe actions to restore compliance;
- Issue civil penalties;
- Exclude not fit and proper persons from a role;
- Restrict activities in relation to concerns over AML/CFT controls;
- Suspend or revoke licenses unilaterally; and
- Seek prosecution under the AML/CFT legislation.

However, while regulators may share broadly the same powers, the way the powers are applied can vary and it is this 'enforcement strategy/policy' that the GSC thinks will be of greater interest to people reading this document.

4. The difference between the enforcement strategy and the policy

The GSC recognises that once it has a range of administrative sanctions at its disposal, stakeholders will be interested to understand when and how the powers will be applied.

The GSC has a goal as a regulator: to make sure the AML/CFT legislation is correctly and effectively applied by gambling operators.

To achieve this goal, the GSC has an AML/CFT enforcement strategy:

- 1) To explain AML/CFT obligations and offer guidance to licensees so that AML/CFT obligations are clearly understood;
- 2) To assume virtue in each licensee, that each licensee sees the intrinsic value of combating money laundering and terrorist financing and is seeking to comply with the law;
- 3) Where inspection or reporting demonstrates a deficiency, to explain that deficiency to the licensee once and secure a commitment to fix the deficiency;
- 4) Where inspection or reporting demonstrates repeat deficiencies, unfixed deficiencies or a pattern of serial deficiencies in different areas, to examine the underlying causes;
- 5) If the GSC determines that AML/CFT compliance failures, either singly or in aggregate stem from negligence or contempt for the law, to review the suitability of the licensee's leadership and in cases where material risk exists, to review the status of the licence;
- 6) If repeated inspection demonstrates that AML/CFT compliance is embedded within a licensee's approach, to move that licensee to a largely desk-based only approach, supported by the occasional audit of activity to confirm it matches process.

It is unlikely that the additional powers the GSC will obtain from the Bill will change this strategy, except that, in item 6 of the strategy:

- It will be possible to specify formally which controllers the GSC feels should be limited or removed from the affairs of the licensee; and
- Additional powers will exist that are punitive but which fall short of the removal of a licence.

Whereas the strategy of the GSC is designed to achieve the goal it has set out for AML/CFT, the GSC's policy on enforcement will detail the criteria that will be used when determining how strong a sanction is when it is imposed.

For example, if the GSC determines a civil penalty is appropriate, should it be fixed or variable, and if it is variable should it be based on the seriousness of the deficiency, whether the deficiency is the first instance for the licensee, how the licensee has interacted with the GSC since it was identified, and so forth.

The GSC has not yet decided on any enforcement policy but intends to do the following:

- Invite informal views at this stage on what stakeholders believe the GSC might find points of interest when developing the enforcement policy;
- Develop its enforcement policy once the powers are available;
- Consult on the enforcement policy, probably in Q1 2018;
- Publish its enforcement policy so that stakeholders understand the criteria.

5. Summary

The consultation that this document accompanies is on the wording of the legislation that seeks to give to the GSC the internationally expected powers to impose administrative sanctions. If you believe that the wording in the proposed Bill is defective, please make your views known to the GSC.

While the Bill is unlikely to affect the GSC's strategy on when to intervene with an operator, it will cause the GSC to create a new enforcement policy which integrates the additional powers. The GSC is beginning to think about this second topic. If you have views on matters that you think would be of interest to the GSC you may make your views known to the GSC at this stage for consideration. This current consultation exercise will not be formally responding to any views you share on this second topic and your views should be submitted on the basis that they may be of interest to the GSC as points to consider when constructing the policy for consultation. The GSC will however consult formally on this topic in 2018 and ask for your views on what the parameters for the additional powers should be.

Appendix A : Overview of the Gambling Acts and AML/CFT legislation

The primary law that sets out the licensing and general compliance regime relating to the gambling sector are known collectively as the “Gambling Acts” and include –

- a) the *Gaming (Amendment) Act 1984*;
- b) the *Casino Act 1986*;
- c) the *Gaming, Betting and Lotteries Act 1988*;
- d) the *Online Gambling Regulation Act 2001*;
- e) the *Gambling (Amendment) Act 2006*; and
- f) the *Gambling Supervision Act 2010*.

Links to the Gambling Acts and regulations made under those Acts are available on the GSC’s website: www.gov.im/about-the-government/statutory-boards/gambling-supervision-commission

The necessary provisions for the GSC to oversee compliance with the requirements of the Gambling Acts plus powers to deal with instances of non-compliance with those requirements are set out in the Acts.

AML/CFT legislation is separate to the general compliance requirements of the Gambling Acts. The AML/CFT legislation applies to the gambling sector as the following are businesses in the regulated sector¹ -

- a) any activity permitted to be carried on by a licence holder under a casino licence granted under the *Casino Act 1986* or on premises in respect of which a temporary premises certificate is in issue under Part IIA of that Act;
- b) the business of a bookmaker within the meaning of the *Gaming, Betting and Lotteries Act 1988*;
- c) the business of providing online gambling within the meaning of section 1 of the *Online Gambling Regulation Act 2001*;
- d) the business of selling or supplying controlled machines within the meaning of the *Gaming (Amendment) Act 1984*.

Whereas the Gambling Acts include supervisory powers regarding general compliance matters, the Anti-Money Laundering (Gambling) Bill provides the GSC with the necessary powers for dealing with supervision of the AML/CFT legislation, which is-

- a) Sections 7 to 11 and section 14 of the *Anti-Terrorism and Crime Act 2003*;
- b) Part 3 (money laundering) of the *Proceeds of Crime Act 2008*;
- c) Parts 2, 3 and 4 of the *Terrorism and Other Crime (Financial Restrictions) Act 2014*;
- d) Any instrument of legislative character made under 1) to 3).

Item d) of the list above includes AML/CFT Codes made under the Proceeds of Crime Act which are currently –

- a) the Money Laundering and Terrorist Financing (Online Gambling) Code 2013;
- b) the Anti-Money Laundering and Countering the Financing of Terrorism Code 2015.

¹ As set out in the Proceeds of Crime (Business in the Regulated Sector) Order 2015