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## GAMBLING (ANTI-MONEY LAUNDERING AND COUNTERING THE FINANCING OF TERRORISM) BILL 2017

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## **GAMBLING (ANTI-MONEY LAUNDERING AND COUNTERING THE FINANCING OF TERRORISM) BILL 2017**

A **BILL** to provide the necessary powers to conduct regulatory oversight of the gambling sector's compliance with Anti-Money Laundering and Countering the Financing of Terrorism requirements; to provide sanctions for non-compliance; and for connected purposes.

**BE IT ENACTED** by the Queen's Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows:—

### **PART 1 – INTRODUCTORY**

#### **1 Short title**

The short title of this Act is the Gambling (Anti-Money Laundering and Countering the Financing of Terrorism) Bill 2017.

#### **2 Commencement**

- (1) This Act (except sections 1 and 3 and this section) will come into operation on such day or days as the Commission may by order appoint.
- (2) An order under subsection (1) may make such consequential, incidental, supplemental and transitional provisions as appear to the Commission to be necessary or expedient for the purposes of the order.

#### **3 Interpretation**

- (1) In this Act —
  - “**AML/CFT**” means anti-money laundering and countering the financing of terrorism;
  - “**AML/CFT Codes**” means instruments of a legislative character, referred to as Codes, made under any of the enactments referred to in paragraphs (a) to (c) of the definition of “**AML/CFT legislation**”;

**“AML/CFT information”** means information specified in compliance returns to be submitted in accordance with section 9 (Compliance returns);

**“AML/CFT legislation”** means the requirements of the following enactments —

- (a) sections 7 to 11 and section 14 of the *Anti-Terrorism and Crime Act 2003*;
- (b) Part 3 of the *Proceeds of Crime Act 2008*;
- (c) Part 2, 3 and 4 of the *Terrorism and Other Crime (Financial Restrictions) Act 2014*;
- (d) any instrument of a legislative character made under any of the enactments referred to in any of paragraphs (a) to (c),

and includes, in the case of anything done outside the Island, anything that would constitute a requirement under any of the enactments specified in paragraphs (a) to (d) if done in the Island;

**“bookmaker”** has in this Act the same meaning as that given to it in section 48(1) of the *Gaming Betting and Lotteries Act 1988*;

**“the Commission”** means the Isle of Man Gambling Supervision Commission, and reference to the Commission includes the Commission’s acting, as and when it decides to do so, through an authorised person;

**“corporate service provider”** means the provider of any services listed under the heading ‘CLASS 4 – CORPORATE SERVICES’ in Schedule 1 to the Regulated Activities Order 2011;

**“Court”** means the High Court;

**“directions”** means directions given by the Commission requiring the holder of a licence, permit or certificate, as the case may be, to undertake a specified activity;

**“FATF Recommendations”** means the 40 Recommendations set out in the Financial Action Task Force (“FATF”) document ‘International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation’, adopted by the FATF in February 2012;

**“Financial Intelligence Unit”** or **“FIU”** means the body corporate established in that name by section 4 (Establishment of Financial Intelligence Unit) of the *Financial Intelligence Unit Act 2016*;

**“Financial Services Authority”** means the Isle of Man Financial Services Authority established by section 1 (The Isle of Man Financial Services Authority) of the *Financial Services Act 2008*;

**“Gambling Acts”** means —

- (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*;

**“gambling”** means —

- (a) gaming (within the meaning of the *Gaming, Betting and Lotteries Act 1988*);
- (b) making, negotiating and receiving bets and wagers;
- (c) organising, managing, promoting or participating in a lottery; or
- (d) supplying or operating controlled machines (within the meaning of the *Gaming (Amendment) Act 1984*);

**“National Risk Assessment”** means an evaluation of a jurisdiction’s money laundering and terrorist financing risks, which —

- (a) is required by the FATF Recommendations; and
- (b) aims to ensure that actions are coordinated domestically to combat money laundering and the financing and proliferation of terrorism;

**“non-aggregated data”** means personally identifiable data;

**“operator”** or **“designated gambling operator”** means any or all of the following, as the context may require —

- (a) the holder of an online gambling licence issued under the *Online Gambling Regulation Act 2001*;
- (b) the holder of a casino licence issued under the *Casino Act 1986*;
- (c) the holder of a temporary casino premises certificate, issued under the *Casino Act 1986*;
- (d) the holder of a bookmaker permit, issued under the *Gaming, Betting and Lotteries Act 1988*;
- (e) the holder of a betting office licence, issued under the *Gaming, Betting and Lotteries Act 1988*;
- (f) the holder of a racecourse licence or a totaliser licence, issued under the *Gaming, Betting and Lotteries Act 1988*;
- (g) the holder of a temporary exemption, issued under the *Gaming, Betting and Lotteries Act 1988*;

**“prescribe”** means prescribe by order made under this Act, and “prescribed” must be construed accordingly;

**“prohibition”** means a prohibition against a “not fit and proper” person’s involvement in a regulated gambling activity;

“**regulated activity**” means an activity regulated under any of the Gambling Acts;

“**Tribunal**” means the Gambling Appeals Tribunal established under section 6 (The Gambling Appeals Tribunal) of the *Gambling (Amendment) Act 2006*;

“**warning notice**” means a notice that —

- (a) asserts that the Commission has grounds to believe that such activities or circumstances as are specified in the notice are prejudicial to a person’s fitness and propriety; and
  - (b) is accompanied by a statement of the reasons for the giving of it.
- (2) The Treasury may by order amend the definition of “**operator**” or “**designated gambling operator**”, and any such order will not come into operation until it has been approved by Tynwald.

#### **4 Restrictions on scope of application**

- (1) This Act does not extend to businesses that conduct gambling without a proper licence, permit or certificate under the Gambling Acts.
- (2) Businesses referred to in subsection (1) are subject to the provisions of the Gambling Acts.

## **PART 2 – SUPERVISION AND OVERSIGHT OF COMPLIANCE WITH AML/CFT REQUIREMENTS**

#### **5 Duty to provide AML/CFT regulation and oversight**

- (1) Consistently with the regulatory objectives set out in section 5 (Regulatory objectives) of the *Gambling Supervision Act 2010*, the Commission must regulate gambling with a view to securing compliance with AML/CFT requirements.
- (2) In fulfilling its duty under subsection (1), the Commission has and is required to exercise (as it considers appropriate) the powers set out in the remainder of this Part.

#### **6 Power to restrict holders of permits or licences**

- (1) The Commission may by written notice —
  - (a) restrict all business operations of the holder of a bookmaker’s permit or a betting office licence, in either case issued under the *Gaming Betting and Lotteries Act 1988* (“the holder”); or
  - (b) restrict business operations of the holder in relation to one or more of the holder’s betting offices only,

for a period specified in the written notice, unless rectification has occurred sooner.

This power may only be exercised in any of the circumstances set out in subsection (2).

- (2) Subsection (1) applies only where the holder fails to comply with any requirement of AML/CFT legislation the contravention of which is not made an offence thereunder.
- (3) In either of the circumstances set out in subsection (2), the Commission must —
  - (a) notify the holder in writing of the details of the alleged failure to comply; and
  - (b) must give the holder an opportunity to make representations (either personally or through a duly authorised representative) in order to show cause why the Commission should not take action against the holder in accordance with subsection (1).
- (4) The Commission must, when deciding whether or not to exercise its power under subsection (1), take into account and give appropriate weight to any representations made by or on behalf of the holder in accordance with paragraph (b) of subsection (3).

## 7 Licence conditions

- (1) The Commission may amend an operator's licence conditions for AML/CFT reasons at any time for any of the following reasons —
  - (a) to restrict activities until the Commission is satisfied that appropriate controls are in place regarding a specific element of an operator's business; or
  - (b) to require an operator to comply with certain recommendations or guidance.
- (2) Subsection (1) is in addition to the provisions of section 5A (Variation of casino licences) and 12D (Certificate conditions) of the *Casino Act 1986* and subsection (3) of section 9 (Variation and transfer of licence) of the *Online Gambling Regulation Act 2001*.

## 8 Supervisory powers

- (1) The Commission may —
  - (a) at any time within normal business hours enter any premises in which gambling is conducted; and
  - (b) therein conduct onsite inspections with a view to assessing compliance with AML/CFT legislation,

and these powers extend to premises which the Commission has reasonable cause to believe are or have been used for any purpose connected with gambling.

- (2) When acting in accordance with subsection (1), the Commission may —
  - (a) request information from operators; or
  - (b) access an operator's premises to inspect their books, accounts and documents.
- (3) Every operator of whom, in accordance with subsection (2), —
  - (a) information is requested;
  - (b) compliance returns are required; or
  - (c) access to the operator's premises is requested,must comply with the request or demand, as the case may be.
- (4) An operator who contravenes subsection (3) commits an offence for which the Commission may offer the operator the opportunity of paying a civil penalty as an alternative to prosecution, failing which the operator will be prosecuted and will be liable on summary conviction to a fine not exceeding £5,000 or to custody for a term not exceeding three months.

## 9 Compliance returns

- (1) An operator must submit to the Commission a return of AML/CFT information at such frequency as may be determined by the Commission from time to time.
- (2) The Commission must by order prescribe the frequency with which a return must be submitted to it in accordance with subsection (1).
- (3) Information provided in returns under this section may be used by the Commission in a National Risk Assessment.
- (4) There must be included in a return submitted under this section such information as the Commission prescribes.
- (5) Failure, without reasonable excuse, to comply with this section is an offence punishable on summary conviction by a fine not exceeding £5,000 or custody for a term not exceeding six months.

## 10 Access to premises

- (1) The Commission may conduct inspections at an operator's premises and may access and take copies of relevant information, including computer records.
- (2) The power under subsection (1) extends to premises where an operator is acting under a temporary exemption issued under the *Gaming, Betting and Lotteries Act 1988*.



- (3) The Commission may access premises to inspect records relating to the holder of a licence or permit issued by the Commission under the provisions of the *Gaming, Betting and Lotteries Act 1988*.

## **11 On-site inspections and investigations**

- (1) The Commission —
  - (a) may carry out inspections and investigations at an operator's premises to assess the extent to which the operator complies with AML/CFT legislation; and
  - (b) in so doing must take into account the operator's own procedures for achieving such compliance.
- (2) The Commission may inspect the books, accounts and documents and investigate the transactions of an operator.
- (3) The Commission has every power of entry and access as may be necessary for the purposes of subsection (1) and may take possession of all such books, accounts and documents for so long as may be necessary for those purposes.
- (4) The Commission may take copies of all books, accounts and documents in its possession for the purposes of an inspection and investigation under this section.
- (5) The rights of entry and access under subsection (3) may be exercised only during reasonable hours.

## **12 Obligations for staff to assist**

- (1) Every member of staff of an operator must cooperate with inspections under sections 10 and 11 and must answer questions and provide explanations of records.
- (2) Despite subsection (1), no member of staff of an operator is under an obligation under this Act to disclose any information subject to legal privilege within the meaning of section 13 (Meaning of "items subject to legal privilege") of the *Police Powers and Procedures Act 1998*.
- (3) A person who contravenes subsection (1) or provides any false or misleading information in purported compliance with subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding £5,000 or to custody for a term not exceeding six months, or both.
- (4) It is a defence for a person charged with an offence under subsection (3) to prove that he or she did not answer questions or provide explanations in accordance with subsection (1) because doing otherwise would have entailed the divulging of information subject to legal privilege within the

meaning of section 13 (Meaning of “items subject to legal privilege”) of the *Police Powers and Procedures Act 1998*.

### 13 Offences in connection with inspections and investigations

- (1) A person who —
- (a) knows or suspects that —
    - (i) an inspection is being or is likely to be carried out under section 11 (On-site inspections and investigations);
    - (ii) information is being or is likely to be required under 14 (Search warrants) or section 16 (Power to request information); or
    - (iii) information is being or is likely to be requested under section 17 (Procedure and further details for requesting information); and
  - (b) falsifies, conceals, destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction or disposal of, information that the person knows or suspects is or would be relevant to such inspection or investigation or is or would be requested,

commits an offence, unless the person proves that the person had no intention of concealing facts disclosed by the information from persons carrying out such an inspection or investigation or requesting such information.

- (2) A person who —
- (a) without reasonable excuse fails to comply with a requirement imposed on the person under section 16 (Power to request information); or
  - (b) intentionally obstructs a person exercising powers conferred by section 11 (On-site inspections and investigations), or subsection (2) or (3) of section 14 (Search warrants),

commits an offence.

- (3) A person who commits an offence under this section is liable —
- (a) on summary conviction, to a fine not exceeding £5,000 or to custody for a term not exceeding 12 months, or both; or
  - (b) on conviction on information, to a fine or to custody for a term not exceeding 2 years, or both.

### 14 Search warrants

The Commission may, in accordance with section 15 (Procedural provisions on search warrants), obtain a search warrant to enter an operator’s premises.

## 15 Procedural provisions on search warrants

- (1) Where, on information on oath laid by the Commission, a judge is satisfied in relation to any documents, that there are reasonable grounds for believing —
  - (a) that —
    - (i) a person has failed to comply with an obligation under section 16 (Power to request information) to produce them or copies of them;
    - (ii) it is not practicable to serve a notice under subsection (2) or (3) of section 18 (Power to require persons to attend before the Commission, etc.) in relation to them; or
    - (iii) the service of such a notice in relation to them might seriously prejudice the investigation; and
  - (b) that they are on the premises specified in the information, the judge may issue such a warrant as mentioned in subsection (2).
- (2) That warrant is a warrant authorising any person named in it —
  - (a) to enter (using such force as is reasonably necessary for the purpose) and search the premises; and
  - (b) to take possession of any documents appearing to be documents of the description specified in the information, or to take in relation to any documents so appearing any other steps which may appear to be necessary for preserving them and preventing interference with them.
- (3) If, during the course of a search of premises for documents of a description specified in the information, other documents are discovered that appear to contain evidence in relation to any offence, the person named in the warrant may —
  - (a) take possession of those documents; or
  - (b) take in relation to them any other steps which may appear to be necessary for preserving them and preventing interference with them.
- (4) A person executing a warrant issued under subsection (1) must be accompanied by a constable.

## 16 Power to request information

- (1) The Commission may request, from anyone the Commission has reasonable grounds to believe is in possession of it, information the Commission reasonably requires to enable it to better supervise compliance with AML/CFT legislation.

This section is subject to section 17 (Procedure and further details for requesting information).

- (2) An operator of whom a request for information is made by the Commission must provide the information within such reasonable time as may be specified by the Commission in the request or in subsequent correspondence.
- (3) An operator who fails to comply with subsection (2) commits an offence and is liable on summary conviction to a fine not exceeding £5,000.

## **17 Procedure and further details for requesting information**

- (1) The Commission may request information about —
  - (a) the affairs of a customer of an operator;
  - (b) any body corporate that is or has at any relevant time been —
    - (i) a holding company, subsidiary or related company of the operator;
    - (ii) a subsidiary of a holding company of the operator;
    - (iii) a holding company of a subsidiary of the operator; or
    - (iv) a body corporate in the case of which a shareholder controller of the operator, either alone or with any associate, is entitled to exercise, or control the exercise of, more than 50% of the voting power at a general meeting or a meeting of the board of directors; or
  - (c) any partnership of which the person is or has at any relevant time been a member.
- (2) If it has made a request of an operator the Commission may issue a direction under section 21 (Directions) to that operator to secure that effect is given to a request under subsection (1) or section 16 (Power to request information); and the direction must include a statement of reasons for its issue.
- (3) A statement by a person in response to the direction may not be used in evidence against that person in respect of any criminal proceedings except proceedings alleging contravention of Schedule 2 to the *Gambling Supervision Act 2010*.
- (4) The powers provided by this section may also be exercised in relation to a person who is, on reasonable grounds, suspected by the Commission of carrying on or having carried on the business of an operator without the required licence, permit or certificate, as the case may be.

## **18 Power to require persons to attend before the Commission, etc.**

- (1) A justice of the peace may by written instrument authorise the Commission to exercise the powers under this section if, on an application made by the Commission,—

- (a) the justice of the peace is satisfied that there is good reason for the Commission to do so;
- (b) the good reason is for the purpose of investigating the affairs, or any aspect of the affairs, of any operator; and
- (c) doing so is relevant to assessing compliance with AML/CFT legislation in relation to the conduct of any business which the operator is carrying or appears to be or to have been carrying on.

These powers are not otherwise exercisable.

- (2) The Commission may, by notice in writing accompanied by a copy of the instrument issued by the justice of the peace under subsection (1), require the person whose affairs are to be investigated or any other person whom it has reason to believe has relevant information, to attend before the Commission at a specified time and place to answer questions or otherwise furnish information with respect to any matter relevant to the investigation.
- (3) The Commission may, by notice in writing accompanied by a copy of the instrument issued by the justice of the peace under subsection (1), require any person to produce at a specified time and place any specified documents or copies of documents that appear to the Commission to relate to any matter relevant to the investigation or any information of a specified class that appears to it to so relate.
- (4) If a person who is required to produce a document or copies of documents fails to do so as required under subsection (3), the Commission may require the person to state, to the best of the person's knowledge or belief, where they are.
- (5) If any documents are produced as required under subsection (3), the Commission may —
  - (a) take possession of all such documents for as long as the Commission considers them necessary;
  - (b) take copies or extracts from them; or
  - (c) require the person producing them to provide an explanation of any of them.
- (6) Any statement by a person in response to a requirement imposed under this section may not be used in evidence against that person in respect of any criminal proceedings except proceedings alleging contravention of —
  - (a) subsection (2)(a) of section 13 (Offences in connection with inspections and investigations); or
  - (b) Schedule 2 to the *Gambling Supervision Act 2010*.
- (7) Where a person claims a lien on a document, its production under this section is without prejudice to the lien.

**19 Information sharing**

- (1) The Commission may share non-aggregated data with any or any combination of the parties set out in Schedule 2 to the *Gambling Supervision Act 2010* and with such other entities as the Commission may prescribe.
- (2) An order prescribing entities with which the Commission may share information under this section will not come into operation unless it has first been approved by Tynwald.

**PART 3 – SANCTIONS****20 Sanctioning powers**

- (1) Where the Commission detects a failure by an operator to comply with AML/CFT legislation, the Commission may impose sanctions in accordance with this Part.
- (2) Civil penalties cannot be used where either a criminal prosecution or revocation of licence is being pursued.
- (3) In addition to the sanctions set out in the following provisions of this Part, the Commission may –
  - (a) identify deficiencies through visit reports;
  - (b) set actions for the operator to address deficiencies;
  - (c) increase the intensity or frequency of future inspections;
  - (d) notify the Financial Services Authority of concerns with respect to corporate service providers that provide services to operators; or
  - (e) prosecute the operator with the consent of the Attorney General, or refer the operator to the Attorney General for prosecution; in either case for breach of the AML/CFT Codes.

**21 Directions**

- (1) The Commission may issue written directions to an operator.
- (2) A direction may –
  - (a) require the operator to take such action in respect of the operator's business as is specified in the direction;
  - (b) impose such requirements as are necessary to secure that any business carried on by that operator is in whole or in part suspended or discontinued; or
  - (c) require the operator to provide to the Commission a report –
    - (i) on any other matter that the Commission considers appropriate;

- (ii) in such form as specified in the direction;
  - (iii) by a person with relevant professional skills nominated by, or considered acceptable to, the Commission,and must include a statement of reasons for its issue.
- (3) The Commission may revoke or vary a direction under this section and the requirement in subsection (2) to give a statement of reasons applies to a variation as it applies to the issue of a direction.
- (4) If an operator fails to comply with a written direction issued under this section, the operator commits an offence for which the operator —
  - (a) is liable to such civil penalty as may be prescribed; and
  - (b) must be charged if the operator refuses to pay the civil penalty, and where the operator is charged under paragraph (b), the operator will be liable on summary conviction to a fine not exceeding £5,000.
- (5) In addition to having thereby committed an offence, an operator who fails to comply with a written direction issued under this section is liable to —
  - (a) have a public statement issued by the Commission under section 22 (Public statements);
  - (b) the Commission's applying to the Court for an injunction or a remedial order under section 24 (Injunctions and remedial orders); or
  - (c) the implication that the operator's controllers are "not fit and proper" persons and to appropriate action accordingly being taken against such controllers under this Act.

## 22 Public statements

- (1) The Commission may issue a public statement —
  - (a) with respect to, or setting out, any direction that it has given under section 21 (Directions);
  - (b) concerning a person if that person appears to the Commission to have contravened any of the following —
    - (i) a direction given under section 21 (Directions); or
    - (ii) AML/CFT legislation; or
  - (c) concerning regulated activities that —
    - (i) the Commission reasonably believes a person is engaging in, whether in the Island or elsewhere; and
    - (ii) in the opinion of the Commission, it is desirable in the public interest should be brought to the attention of the public.

- (2) If a public statement will identify any operator, the Commission must serve notice on the operator before issuing a public statement.
- (3) If a public statement will identify any person who is not an operator and at any time before the Commission issues the public statement it is reasonably practicable for it to serve notice on the person, the Commission must do so.
- (4) A notice under subsection (2) or (3) must —
  - (a) give the reasons for issuing the statement;
  - (b) give the proposed or actual date of issue of the statement;
  - (c) contain a copy of the statement; and
  - (d) if the statement is issued, in accordance with a decision under subsection (2)(b) of section 23 (Notice period for public statements), before the day specified in section 23(1) in relation to the statement, give the reasons for issuing it before that day.
- (5) Subsection (4) does not require the Commission —
  - (a) to specify any reason that would in the Commission's opinion involve the disclosure of confidential information the disclosure of which would be prejudicial to a third party; or
  - (b) to specify the same reasons, or reasons in the same manner, in the case of notices to different persons about the same matter.

### **23 Notice period for public statements**

- (1) If service is required under subsection (2) or (3) of section 22 (Public statements) in relation to a public statement, the Commission must not issue the public statement earlier than one month after the date of that service.
- (2) Without limiting subsection (1), the Commission may issue the statement on or after an earlier date if —
  - (a) each of the persons identified in the relevant public statement agrees to that date; or
  - (b) the Commission decides on reasonable grounds that the interest of the public in the issue of the relevant public statement on that earlier date outweighs any detriment to the persons identified in the statement as a result of such issue.
- (3) In making a decision under subsection (2)(b), the Commission may choose as the date of issue of a public statement the date of service (if any) of notice of the statement.
- (4) Despite this section, if an appeal is made to the Tribunal and the Tribunal orders that the statement not be issued before any specified date or event, the Commission must not issue the statement before that date or event.



## 24 Injunctions and remedial orders

- (1) If, on the application of the Commission, the Court is satisfied that it is likely that a person will contravene (or continue or repeat a contravention of) —
  - (a) a direction given under section 21 (Directions);
  - (b) section 28 (Direction to appoint appropriate expert);
  - (c) section 29 (Direction not to appoint an individual);
  - (d) section 31 (Prohibition of “not fit and proper” persons); or
  - (e) AML/CFT legislation,the Court may, if it thinks fit, issue an injunction restraining that person from committing (or, as the case may be, continuing or repeating) the contravention.
- (2) If, on an application of the Commission, the Court is satisfied that there are steps that could be taken to remedy the contravention, the Court may make an order requiring that person, or any other person, who appears to the Court to have been knowingly concerned, to take such steps as the Court may direct to remedy the contravention.

## 25 Civil penalties

- (1) If the Commission is satisfied that an operator —
  - (a) has contravened any provision of this Act;
  - (b) has failed in any respect to comply with AML/CFT legislation; or
  - (c) in purported compliance with AML/CFT legislation, has furnished the Commission with false, inaccurate or misleading information,it may require the operator to pay a penalty in respect of the contravention.
- (2) Despite subsection (1), no penalty may be required under this section if —
  - (a) the Commission revokes or intends to revoke the operator’s licence, permit or certificate, as the case may be; or
  - (b) criminal proceedings have been commenced in respect of the failure.
- (3) If the Commission intends to impose a penalty, it must give to the operator concerned written notice of the decision, the amount of the penalty it proposes to impose and the reasons for the decision.
- (4) The Commission is prohibited from levying a civil penalty for failure to comply with the requirements of section 9 (Compliance returns).
- (5) In respect of failure to comply with the requirements of section 9 (Compliance returns), the Commission may instead issue a written

direction to require the operator to provide the return within a specified timeframe.

- (6) The Commission may prescribe additional circumstances in which a civil penalty may be imposed in lieu of criminal proceedings under this Act.
- (7) An order under this section may make further provision about civil penalties.
- (8) Any amount received as a penalty must be paid into and forms part of the General Revenue of the Island.

## 26 Warning notice

The Commission may warn an individual and the operator of possible future proceedings regarding their fitness and propriety with respect to AML/CFT legislation, subject to their taking certain actions in order to address any issues identified.

## 27 Procedure in respect of warning notices

- (1) The Commission may —
  - (a) before making a direction under section 21 (Directions); or
  - (b) in any other circumstances in which the Commission considers it appropriate to do so,give a written warning notice under this section to a person who is or has been a director, senior manager or controller (“the relevant person”) of an operator.
- (2) A warning notice may —
  - (a) propose that the relevant person take such action as is specified in the notice;
  - (b) request the relevant person to propose action; or
  - (c) specify action that the relevant person must take and the time within which it must be taken.
- (3) Where a warning notice has been given under this section, the Commission must, before making a direction under either of sections 21 (Directions) or 28 (Direction to appoint appropriate expert), or imposing a prohibition under section 32 (Procedure in respect of prohibitions), take into account any action taken by the relevant person in response to the warning notice.
- (4) The Commission’s powers under sections 31 (Prohibition of “not fit and proper” persons) and 33 (Prohibition procedure) are not limited by the giving of a warning notice under this section; neither is the giving of such a notice required before the Commission may exercise those powers.

- (5) A warning notice issued under this section has effect —
- (a) for a period of up to 3 years from the date on which it is issued under subsection (1) and such period as must be specified in the notice; or
  - (b) until such time as the Commission is content that any action under subsection (2) has been completed to its satisfaction.
- (6) The Commission may disclose the circumstances surrounding a warning notice to —
- (a) an employer who currently employs a notified person;
  - (b) a person who has received an employment application from a notified person and who, if successful in the application, would be required to be a director, senior manager or controller of a permitted person; or
  - (c) a company of which a notified person is, or is likely to become, an officer.
- (7) In subsection (6) —
- “**notified person**” means a person to whom has been given a notice under subsection (1) that is still effective in accordance with subsection (6); and
- “**officer**” means an officer of a company for the purposes of the *Company Officers (Disqualification) Act 2009* (see subsection (2) of section 1 (Disqualification orders: introduction) of that Act).

## 28 Direction to appoint appropriate expert

- (1) The Commission may require an operator to appoint or contract a professional with appropriate expertise to remedy any deficiencies in respect of complying with AML/CFT legislation.
- (2) The suitability of the professional that the operator proposes to appoint or contract must be determined based on an assessment of —
- (a) the appropriateness of the professional’s knowledge of and experience in complying with AML/CFT legislation; and
  - (b) the professional’s ability to adhere to deadlines for taking remedial action.

## 29 Direction not to appoint an individual

The Commission may attach conditions to a direction so as to prevent an operator from allowing a person who is not a fit and proper person (with respect to the requirements of AML/CFT legislation) from carrying out a role specified in the conditions.

**30 Persons unfit to be directors, controllers or senior managers**

- (1) If, on reasonable grounds, it appears to the Commission that a person is not a fit and proper person —
  - (a) to be appointed as a director or senior manager; or
  - (b) to become a controller,  
of the holder of a licence, permit or certificate, as the case may be (a “permitted person”), the Commission may direct that such person must not, without the written consent of the Commission, be appointed as such a director or senior manager or become such a controller.
- (2) If, on reasonable grounds, it appears to the Commission that any —
  - (a) director or senior manager; or
  - (b) controller,  
of a permitted person, is not a fit and proper person to continue as such, the Commission may direct that such person must not, without the written consent of the Commission, continue as such a director, senior manager or controller.
- (3) The Commission must give written notice to the person concerned of any decision to make a direction under this section, together with a statement of the reasons for the decision.
- (4) Subject to subsection (5), where a notice has been given under subsection (3), the direction will take effect —
  - (a) if no appeal under section 41 (Appeals to the Tribunal) is made within the period prescribed for the purposes of such an appeal, on the expiry of that period; or
  - (b) if there is an appeal under section 41 (Appeals to the Tribunal)—
    - (i) where the appellant abandons the appeal, on the date of abandonment;
    - (ii) where the decision of the Commission is confirmed, on the date of confirmation; or
    - (iii) where the decision of the Commission is varied, on such date as the Tribunal directs.
- (5) If the Commission is of the opinion that a direction should have immediate effect, the notice under subsection (3) must contain a statement to that effect together with the reasons for that opinion, and the direction will have no effect on the giving of the notice.
- (6) Any direction or consent by the Commission under subsection (1) or (2) may be —
  - (a) given subject to conditions;
  - (b) varied from time to time; or
  - (c) revoked at any time,

and the Commission must give written notice to the person concerned of any decision to exercise the powers conferred by paragraph (a), (b) or (c).

- (7) A person must not –
  - (a) accept or continue in any appointment referred to in subsection (1)(a) or (2)(a); or
  - (b) become or continue as a controller,  
in contravention of a direction under this section.
- (8) A licence holder must not appoint a person in contravention of a direction under subsection (1).
- (9) The Commission must take reasonable care not to continue the appointment of a person in contravention of a direction under subsection (2).

### **31 Prohibition of “not fit and proper” persons**

The Commission may, in accordance with section 32 (Procedure in respect of prohibitions), attach conditions that will prohibit a “not fit and proper” person (with respect to the requirements of AML/CFT legislation) from performing a function in relation to one operator or a class of operators.

### **32 Procedure in respect of prohibitions**

- (1) The Commission may impose a prohibition if it appears to the Commission that an individual is not a fit and proper person to perform one or more functions in relation to a regulated activity carried on, or proposed to be carried on, by a permitted person.
- (2) Before imposing a prohibition, the Commission must give the individual whom it proposes to prohibit an opportunity to make representations in accordance with subsection (2)(d) of section 33 (Prohibition procedure).
- (3) A prohibition may prevent an individual from performing, either in relation to a particular permitted person, a specified class of permitted person, or generally –
  - (a) any function;
  - (b) a specified function; or
  - (c) a function of a specified class.
- (4) A prohibition may relate to –
  - (a) a regulated activity;
  - (b) a regulated activity specified in the prohibition; or
  - (c) a regulated activity of a prescribed class.
- (5) An individual commits an offence if he or she performs, or agrees to perform, a function which he or she is prohibited from performing.

- (6) A prohibition operates subject to subsections (7) to (9).
- (7) Notice of a prohibition must be served upon the individual prohibited, either personally or by registered post to the individual's last known address.
- (8) Once it has been served, a prohibition comes into operation on —
  - (a) the expiry of time for appealing against it under section 41 (Appeals to the Tribunal); or
  - (b) if an appeal is brought within that time, on the determination or withdrawal of that appeal.
- (9) A notice of prohibition must —
  - (a) state the terms of the prohibition;
  - (b) state the reasons for imposing the prohibition; and
  - (c) give particulars of the right of appeal under section 41 (Appeals to the Tribunal).

### **33 Prohibition procedure**

- (1) If the Commission proposes to impose a prohibition under section 32 (Procedure in respect of prohibitions), it must give written notice to that effect (a "preliminary notice") to the individual whom it proposes to prohibit.
- (2) The preliminary notice must —
  - (a) state that the Commission proposes to impose a prohibition;
  - (b) state the terms of the proposed prohibition;
  - (c) state the grounds for imposing the prohibition;
  - (d) state that within 28 days the individual proposed to be prohibited may make representations to the Commission in such manner as the Commission may specify in the preliminary notice; and
  - (e) give particulars of the right of appeal under section 41 (Appeals to the Tribunal) that would be exercisable if the Commission were to impose the prohibition.
- (3) The Commission must have regard to any representations made in accordance with subsection (2)(d) before imposing a prohibition.

### **34 Prohibitions: variation and revocation procedure**

- (1) On application by a prohibited person, the Commission may vary or revoke a prohibition.
- (2) The Commission must give the prohibited person a statement of its reasons for any decision it makes on an application under subsection (1).

**35 List of prohibitions**

- (1) The Commission must maintain and publish a list of prohibitions.
- (2) The list must specify the individual prohibited and the functions or descriptions of functions to which the prohibition applies.

**36 Suspension or revocation**

- (1) The Commission may, for any of the reasons set out in subsection (2), at any time suspend or revoke —
  - (a) on online gambling licence issued under the *Online Gambling Regulation Act 2001*;
  - (b) a casino licence under the *Casino Act 1986*;
  - (c) a temporary casino premises certificate, issued under the *Casino Act 1986*;
  - (d) a bookmaker permit, issued under the *Gaming, Betting and Lotteries Act 1988*;
  - (e) a betting office licence, issued under the *Gaming, Betting and Lotteries Act 1988*; or
  - (f) a racecourse licence or a totaliser licence, issued under the *Gaming, Betting and Lotteries Act 1988*.
- (2) The reasons referred to in subsection (1) are that —
  - (a) the Commission is not satisfied that the operation is under the ownership, management or control of fit and proper persons;
  - (b) the operator has failed to comply with —
    - (i) restrictions under section 6 (Power to restrict holders or permits or licences);
    - (ii) licence conditions under section 7 (Licence conditions);
    - (iii) a direction under section 21 (Directions);
    - (iv) a direction to appoint an appropriate expert under section 28 (Direction to appoint appropriate expert);
    - (v) a direction not to appoint an individual, under section 29 (Direction not to appoint an individual); or
    - (vi) AML/CFT legislation.
- (3) Where a licence, permit or certificate was issued in respect of more than one regulated activity, the Commission may exercise its powers under this section in respect of any or all of those activities.

**37 Conditions and limitations on the right to suspend or revoke**

When exercising its power under section 36 (Suspension or revocation), the Commission must comply with the following requirements —

- (a) the Commission must give written notice to the person concerned of any decision to suspend or revoke a licence, permit or certificate, as the case may be, together with a statement of the reasons for the decision; and
- (b) where the Commission suspends a licence, permit or certificate, as the case may be, it must review the suspension on a regular basis.

### 38 Offences

If the operator or any officer of the operator contravenes a provision of this Act, he or she commits an offence and is liable —

- (a) on summary conviction, to a fine not exceeding £5,000 or to custody for a term not exceeding 6 months, or both; or
- (b) on conviction on indictment, to a fine or to custody for a term not exceeding 2 years, or both.

### 39 Liability of officers of bodies corporate

- (1) Subsections (2) to (4) apply where an offence under this Act is committed by a body corporate and it is proved that the offence —
  - (a) was committed with the consent or connivance of an officer of the body; or
  - (b) was attributable to neglect on the part of an officer of the body.
- (2) The officer as well as the body commit and are liable to be prosecuted for the offence.
- (3) If an individual is convicted of an offence under this Act by virtue of subsection (2), that individual is liable to the penalty provided for the offence.
- (4) In this section, “officer” has the meaning assigned by subsection (1) of section 1 (Disqualification orders: introduction) of the *Company Officers (Disqualification) Act 2009*.

## PART 4 - MISCELLANEOUS

### 40 Offences and penalties

- (1) A person who commits an offence under this Act for which no penalty is elsewhere provided is liable on summary conviction to a fine not exceeding £5,000 or to a term of custody not exceeding 6 months, or both.
- (2) Criminal proceedings in respect of any contravention of this Act may not be commenced or continued if the Commission has required a person to pay a penalty under section 25 (Civil penalties) in respect of such contravention, unless the person has declined to pay the penalty.



- (3) Proceedings for an offence under this Act are prohibited from being commenced in the Island except by the Commission or by or with the consent of the Attorney General.
- (4) Any document purporting to be the consent of the Attorney General for the commencement of proceedings for an offence under this Act and to be signed by the Attorney General is admissible as *prima facie* evidence without further proof.

#### **41 Appeals to the Tribunal**

- (1) A person aggrieved by a decision made or an action taken by the Commission under any of the sections listed in subsection (2) may appeal to the Tribunal in accordance with the procedure set out in section 6 (The Gambling Appeals Tribunal) of the *Gambling (Amendment) Act 2006*, and any such appeal must be heard in accordance with the provisions of Part 4 of that Act.
- (2) The sections referred to in subsection (1) are —
  - (a) section 6 (Power to restrict holders of permits or licences);
  - (b) section 7 (Licence conditions);
  - (c) section 21 (Directions);
  - (d) section 22 (Public statements);
  - (e) section 25 (Civil penalties);
  - (f) section 28 (Direction to appoint appropriate expert);
  - (g) section 29 (Direction not to appoint an individual);
  - (h) section 30 (Persons unfit to be directors, controllers or senior managers);
  - (i) section 31 (Prohibition of “not fit and proper” persons);
  - (j) section 34 (Prohibitions: variation and revocation procedure);
  - (k) section 36 (Suspension or revocation); and
  - (l) section 37 (Conditions and limitations on the right to suspend or revoke).