

## A CONSULTATION DOCUMENT



## Isle of Man Gambling Supervision Commission

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### **GAMBLING (ANTI-MONEY LAUNDERING AND COUNTERING THE FINANCING OF TERRORISM) ACT 2018;**

- **Civil Penalties Order**
  - **Guidance on the Act**
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[Mar 2018]

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## **PART 1; Background**

### **1. Introduction**

The Gambling Supervision Commission (GSC) is the regulator that supervises the gambling sectors' compliance with Isle of Man "Gambling Acts" and Anti-Money Laundering and Countering the Financing of Terrorism (AML/CFT) legislation.

This consultation seeks views on –

- a) The draft Gambling (Anti-Money Laundering and Countering the Financing of Terrorism) Civil Penalties Order 2018 ("the draft Order"); and
- b) The draft GSC Guidance ("the draft Guidance") on its use of the Gambling (Anti-Money Laundering and Countering the Financing of Terrorism) Act 2018 ("the Act") including the use of civil penalties.

In December 2017 the GSC conducted an informal consultation with the gambling sector on its policy for civil penalties and an earlier draft of the Guidance. The GSC wishes to thank those that responded to the earlier consultation as the views expressed were helpful in developing the draft Order and draft Guidance for this formal consultation.

A summary of consultation responses is provided at Part 2 of this document.

### **1. Timeframe**

This consultation shall remain open for a period of two weeks. The rationale for this condensed consultation is that the policy for use of civil penalties and an earlier draft of the Guidance document were already the subject of a consultation.

Further, the GSC understands the importance of having the Order and Guidance on the Act in place as soon as possible as the Act came into force on 24<sup>th</sup> January 2018 and this provides certainty and transparency to industry on the GSC's approach to enforcing AML/CFT requirements.

## **PART 2; Responses to previous consultation**

### **1. Response rate**

The informal consultation on the policy for use of civil penalties and draft Guidance on the Bill (now the Act) was launched on 22<sup>nd</sup> December 2017 and closed on 19th January 2018.

There were 14 responses to the informal consultation, 4 of which expressed no views.

Prior to the informal consultation the GSC held a meeting with gambling industry representatives. The meeting was held on 14th December 2017. Broadly speaking, attendees agreed that:

- Fixed value penalties would not be appropriate due to the variety of operators that the GSC supervises; the values may be set too high for smaller operators or too low for larger operators.
- Penalties should be capable of including the consideration of aggravating and/or mitigating factors.

### **2. Civil penalties**

The informal consultation on the GSC's policy for use of civil penalties (under Section 22 of the Act) sought views on the following areas-

a) Whether detail regarding the calculation methods, including any aggravating and mitigating factors should be set out in law, policy or a combination;

- 2 responded that the calculation method should be set out in GSC policy.
- 4 responded that the principles should be set in law with details of the calculation method set out in GSC policy.

b) The calculation methods used by other regulators (see Appendix A);

- 8 regarded method C (Principles-based) as the preferred method.
- 1 regarded either method C (Principles-based) or method D (Discretionary) as the preferred method.

c) A draft principles-based calculation method (see Appendix B).

- 1 commented that any penalty issued for a similar breach by another regulator should be taken into account when the GSC determines the amount of a civil penalty (with a view to considering whether there is a risk of double-jeopardy).
- 1 commented that penalties imposed by other regulators should not be taken into account as operators should be accountable in each jurisdiction they operate.
- 1 commented that any consideration of an operator's financial position should not extend to the finances of the group to which the operator belongs.
- 2 suggested that any "aggravating factors" should be tangible and clearly set out in policy.
- 1 suggested that consideration should also be given to whether the breach arose from a systematic failing or human error.
- 1 suggested that consideration should also be given to whether the breach led to any risk of money laundering or terrorist financing taking place.

### **3. GSC Guidance**

The informal consultation on the GSC's Guidance on the Act sought views on –

#### a) the GSC's AML/CFT Strategy;

- 2 commented that the GSC's desire to work with industry to improve compliance was a positive approach.

#### b) the GSC's Policy for the use of sanctioning powers;

- 1 commented that when using the powers of Section 24 (Direction to appoint an appropriate expert) the GSC should not dictate to the operator who the expert should be.
  - This is covered at S.24 / Part 7 of the draft Guidance.
- 1 suggested that clarification should be added that the outcome of a Serious Case Review will be proportionate.
  - This clarification has been added to 4.2 of the draft Guidance.

- 1 suggested that the Chief Executive should not form part of the Serious Case Review panel so that they may act as an independent reviewer.
  - This suggestion has not been adopted because only “standard actions” as described at 4.2 of the draft Guidance may result from a Serious Case Review. For more serious cases, the Risk Committee must either refer to the Board of the Commission for approval to use formal sanctioning powers or to the Attorney General for prosecution. As such, the Commission or Attorney General act as independent reviewer).

c) consideration of aggravating and mitigating factors;

- 1 commented that aggravating factors should be tangible.
- 1 suggested that consideration should be given to whether the breach is systematic or as a result of human error.
  - The GSC considers that this is already covered by the list of aggravating and mitigating factors listed at 4.3 of the draft Guidance.
- 1 suggested that the risk of money laundering or terrorist financing occurring as a result of the breach should also be considered.
  - The GSC considers that this is already covered by the list of aggravating and mitigating factors listed at 4.3 of the draft Guidance).

d) whether the draft Guidance document is clear and helpful to explain the GSC’s powers under the Act and its policy on using them.

- 4 commented that the draft Guidance was clear and helpful.
- 1 commented that the draft Guidance was a positive facilitator of high standards of compliance.
- 1 commented that the document was laid out well and used plain English.
- 1 commented that the draft Guidance was essential to avoid “mission creep”.

## 4. Other matters raised

In addition to the views expressed in relation to the Policy for the use of civil penalties and the draft Guidance, the following points were raised –

- 1 respondent (from the terrestrial gambling sector) was understanding and supportive of the GSC's need for formal sanctioning powers for AML/CFT breaches but considered that their business posed a low money laundering and terrorist financing risk and as such the AML/CFT requirements should be reviewed in this regard.
  - Work on updating the AML/CFT Codes made under the Proceeds of Crime Act 2008 is scheduled to take place in 2018. Any changes to legislation will be subject to formal consultation and the GSC plans to engage in informal discussions with industry prior to drafting.
- 1 commented that the sanctioning powers of the Act should not be used until the Gambling Appeals Tribunal is established and suggested that the Tribunal should include industry representation.
  - The Gambling Appeals Tribunal is established in law under the Gambling (Amendment) Act 2006. The relevant provisions of this Act were 'switched on' on 20<sup>th</sup> December 2017 via the Gambling (Amendment) Act 2006 (Appointed Day) (No. 3) Order 2017.
  - Work is now underway (led by Treasury, the Attorney General's Chambers and the Appointments Commission) to set the Tribunal Rules in law and make arrangements for appointments. It is expected that this will be in place in March 2018.
  - Only breaches identified after the enactment of the Act (24<sup>th</sup> January 2018) may be subject to the sanctioning powers included in the Act. As breaches take some time to investigate the GSC does not foresee any operational issues in imposing sanctions when the Tribunal is available.
- 1 queried the GSC's data protection measures in respect of information and documents obtained under the Act.
  - The GSC is registered as a Data Controller for Data Protection purposes under registration N002090. In accordance with this registration the GSC ensures it manages personal data in line with the 8 Data Protection Principles.

The GSC will ensure that it remains in compliance with any revisions to the Data Protection Act (to be introduced in 2018 to ensure that the Isle of Man's Data Protection law remains compatible with the General Data Protection Regulations).

- 1 queried whether hosting providers had been consulted with.
  - The consultation on the Act itself was a public consultation published on the Government's consultation page.
 

The GSC will engage with hosting providers regarding the practical application of the requirements (it should be noted that such providers are already obliged by some provisions of the Online Gambling Regulation Act 2001.
- 2 respondents raised concerns that the recent MONEYVAL evaluation and the new GSC powers could result in an increase in instances being reviewed under the Serious Case Review process and more instances of sanctions being used in order to demonstrate effectiveness.
  - The GSC considers that publishing guidance on the Act will clarify that only more serious breaches will be subject to a Serious Case Review which may result in the use of formal sanctioning powers.

## **PART 3; Consultation**

### **1. Gambling (Anti-Money Laundering and Countering the Financing of Terrorism) Civil Penalties Order 2018**

The draft Order is very short. It sets only the notice period (28 days) for a notice given under section 22(4) of the Act and that penalties must be paid to the Commission within a further 28 days. The Commission will then arrange for funds to be paid to General Revenue.

The Order also permits an operator to respond to a notice issued under 22(4) with any factors it considers as mitigation for the contravention. Such a response must be made within 14 days of the issue of a notice and in accordance with any relevant GSC guidance.

### **2. GSC Guidance on the Gambling (Anti-Money Laundering and Countering the Financing of Terrorism) Act 2018**

The draft Guidance has been updated following the informal consultation. The following changes have been made -

- Updated to reflect that the Bill is now an Act which took effect from 24<sup>th</sup> January 2018.



- Clarification added to 4.2 that the outcome of a Serious Case Review is proportionate and that Commission approval is required for the use of the formal sanctioning powers.
- Clarification added to the aggravating factor “the issue was easily avoidable”; “e.g. the GSC had issued guidance on the matter or published details of similar failings by another operator previously”.
- Detail added under section 22 (Civil penalties) of part 7 including details of the Order and GSC methods for calculating a civil penalty.
- Addition of an overview of Section 35 of the Act to part 7 (Section 35 was added to the Bill later on in the legislative process).
- Update to Section 34 of Part 7 to reflect progress made in respect of the Gambling Appeals Tribunal.
- Minor typos and formatting issues addressed.

### 3. Consultation Process

The GSC seeks views on the draft Order and draft Guidance within the timeframe specified below.

Comments should be submitted in writing (by post or email) to the following:

**Helen Ault** CAMS MICA Int. Dip (AML)  
 Deputy Director – AML/CFT,  
 Gambling Supervision Commission  
 Ground Floor, St Georges Court, Myrtle St.  
 Douglas, Isle of Man, IM1 1ED  
[helen.ault@gaming.gov.im](mailto:helen.ault@gaming.gov.im)

please cc. email submissions to  
[Mark.Rutherford@gaming.gov.im](mailto:Mark.Rutherford@gaming.gov.im)

The consultation on the Bill will be open until the close of business on:

**Tuesday 3<sup>rd</sup> April 2018**

When submitting your views please-

- indicate whether you are responding on behalf of an organisation; and
- clarify whether your views relate to the draft Order or to the draft Guidance.

For additional hard copies please contact the Gambling Supervision Commission by telephoning 01624 694331. Hard copies will also be available from the Central Reference Library, Government Offices, Bucks Road, Douglas.

Electronic copies of this document are also available at <https://www.gov.im/consultations>

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 name to be kept confidential. Confidential responses will be included in any statistical summary and numbers of comments received.

A summary of the responses received will be published within 3 months of the closing date for this consultation, and will be made available on the Government website or by contacting the above named Officer.

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

Having previously consulted informally (December 2017) on the policy behind the draft Order and draft Guidance (in line with the Consultation Code of Practice) the GSC will be expediting this formal consultation.

Issued on 19<sup>th</sup> March 2018

## Appendix A

Extract from informal consultation on civil penalties;  
Approaches taken by other regulators

	<b>Method</b>	<b>Description</b>	<b>Pros</b>	<b>Cons</b>
<b>A</b>	Set value penalties	The same value penalty applies for all breaches regardless of any aggravating or mitigating factors or the size of the operator in question.	<ul style="list-style-type: none"> <li>• Simple &amp; transparent</li> <li>• Quick for regulator to deal with.</li> </ul>	<ul style="list-style-type: none"> <li>• Unfair disadvantage to smaller operators.</li> <li>• Insufficient to act as a deterrent to larger operators.</li> <li>• Same penalty for minor admin breaches as for more serious or widespread breaches.</li> </ul>
<b>B</b>	Calculation based on operator size	The value of the penalty will be set by calculating a % of the operator's GGY, profit or other measure.	<ul style="list-style-type: none"> <li>• Easy to implement once calculation method agreed.</li> </ul>	<ul style="list-style-type: none"> <li>• Difficult to measure "size" of an operator.</li> <li>• Potentially huge penalties for large operators with minor breaches / tiny penalties for small operators with serious breaches.</li> </ul>
<b>C</b>	Principles-based	The value of the penalty will vary depending on the nature and circumstances of the breach. (E.g. whether the operator profited from the breach, whether the breach was easily avoidable, actions taken by the operator following identification of the breach.)	<ul style="list-style-type: none"> <li>• Penalty tailored to the breach.</li> <li>• Focus on removing the benefit from poor compliance.</li> </ul>	<ul style="list-style-type: none"> <li>• More difficult to calculate as all case-by-case</li> </ul>
<b>D</b>	Discretionary	The regulator sets the penalty as it sees fit, usually up to a set maximum amount.	<ul style="list-style-type: none"> <li>• Every issue dealt with case-by-case.</li> </ul>	<ul style="list-style-type: none"> <li>• Potential lack of transparency if the regulator does not explain how it arrived at the value.</li> <li>• Difficulty in comparing penalties / predicting what penalty a breach could result in.</li> </ul>

## Appendix B

### Extract from informal consultation on civil penalties; Draft Principles-Based Calculation Method

<b>DRAFT: PRINCIPLES-BASED CALCULATION METHOD</b>	
A. Starting point	The maximum value of the criminal fine(s) that would be applicable for summary conviction of the breach(es), if prosecuted.
B. Additions	The amount of any monies that the operator made as a result of failings (where these can reasonably be calculated or estimated);
C. Increase	<p>May be applied where there are aggravating circumstances that the GSC reasonably considers warrants an increase in the amount in order to deliver strong deterrence against future non-compliance.</p> <p>Examples of aggravating factors are -</p> <ul style="list-style-type: none"><li>• Repeated failings by the operator;</li><li>• Failings which arose in similar circumstances to those included in public statements, warning notices, or guidance previously issued by the GSC;</li><li>• Failings that continued after the operator was made or became aware of the issue;</li><li>• Attempts made to conceal the failings;</li><li>• Lack of proactive steps to address the failings and prevent further issues in future.</li></ul>
D. Reduction	May be applied where the operator brought the failings to the attention of the GSC in a pro-active manner, cooperated fully with the GSC's investigations and make significant efforts to address with failings in a timely manner.
E. Maximum	The GSC will take into account the operator's financial situation including whether civil penalties or regulatory sanctions have been imposed by other regulators.

## **Appendix C**

### **Consultation Code of Practice**

This consultation follows the Code of Practice on Consultation the criteria for which are set below.

#### The Six Consultation Criteria

1. Consult widely throughout the process, allowing a minimum of 6 weeks for a minimum of one written consultation at least once during the development of the legislation or policy.
2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
3. Ensure your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your Department's effectiveness at consultation.
6. Ensure your consultation follows best practice, including carrying out an Impact Assessment if appropriate.

The full Code of Practice is available at [www.gov.im/cso](http://www.gov.im/cso)