

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

Explanatory Memorandum

1. This Bill is promoted by Mr Bill Shimmins, MHK on behalf of the Gambling Supervision Commission (“the Commission”).
2. *Clauses 1 and 2* deal, respectively, with the Short Title and Commencement of the resulting Act.
3. *Clause 3* deals with interpretation of the resulting Act. Sub-clause (1) defines key terms used in the resulting Act, whereas sub-clause (2) empowers the Treasury to by order amend the definition of “designated gambling operator” or “operator”, terms presented as synonyms by and defined in sub-clause (1).
4. *Clause 4* imposes restrictions on the scope of application of the resulting Act. It provides that the Act does not extend to businesses that conduct gambling without a proper licence, permit or certificate under the “Gambling Acts”, a term defined in clause 3(1). Such businesses are said to instead be subject to the provisions of the “Gambling Acts”. *Clause 4* is the last clause of Part 1.
5. *Clause 5* is the first clause of Part 2. It imposes on the Commission the duty to regulate gambling with a view to securing compliance with AML/CFT legislation. It also asserts that the Commission is duty-bound, for this purpose, to exercise the powers conferred on the Commission by the remaining provisions of Part 2.
6. *Clause 6* requires an operator to submit AML/CFT returns to the Commission. Such returns must include AML/CFT information and must be submitted from time to time, at such frequency as the Commission determines. Determinations as to frequency must be prescribed, as must the AML/CFT information required to be included in the returns. The clause also specifically states that AML/CFT information may be used by the Commission in a National Risk Assessment.
7. *Clause 7* empowers a person authorised by the Commission (an “authorised person”) to conduct on-site inspections and investigations of premises in which gambling is conducted. For this purpose authorised persons are permitted to enter relevant premises without a warrant. The objective is to assess the extent of the operator’s compliance with AML/CFT legislation, but in so doing the authorised person is mandated to take into account the operator’s own procedures for achieving such compliance. The authorised person is empowered to access and take possession of such books, accounts and documents as may be necessary for achievement of the authorised person’s objective, may keep them for as long as is necessary, and may make copies of

them as deemed necessary. An operator is mandated to cooperate with an authorised person, and failure to do so without reasonable excuse is an offence.

8. *Clause 8* imposes on members of staff of an operator a duty to cooperate with an authorised person acting in accordance with clause 7. This includes the duty to answer questions and to provide explanations of records. However, staff members are excused from disclosing any information subject to legal privilege. This is a defence in proceedings for an offence under this clause, as the clause also provides that failure (without reasonable excuse) to cooperate is an offence. It is also an offence to provide false or misleading information in response to a question or in the course of an explanation. If a staff member is asked to produce documents or copies of documents but fails to do so, the staff member may be required by the authorised officer to state, to the best of the staff member's knowledge or belief, where they are. The clause also precludes the content of statements made in compliance with its requirements from being used as evidence in criminal proceedings against the person who made the statement, except where the statement given is false and misleading.
9. *Clause 9* makes it an offence for anyone who knows that information or documents are likely to be required in the course of an investigation to conceal, destroy or otherwise obfuscate the information. It is a defence if the person proves that the action he or she is accused of having taken was not intended to conceal the information from the persons carrying out the investigation. Generally, the section criminalises the failure to be forthcoming with information properly requested under the resulting Act, unless the reason for doing so is recognised by the resulting Act as exculpatory.
10. *Clause 10* empowers an authorised person to request of any person information that the Commission has reasonable grounds to believe the person has and which the Commission reasonably requires to enable it to better supervise compliance with AML/CFT legislation. The requested information must be provided within a reasonable time of the request for it being made. Failure, without reasonable excuse, to comply with this requirement is an offence, triable either summarily or on information.
11. *Clause 11* empowers an authorised person to request information about the affairs of a customer of an operator, a body corporate that meets any of listed specifications, or a partnership of which an operator is or has at any relevant time been a member. The clause also empowers the Commission to issue a direction to an operator to reinforce a request for information made by an authorised person. The direction must be accompanied by a statement of reasons for its issue. *Clause 11* further provides that, where an operator makes a statement in response to such a direction, that statement may not be used as evidence in any criminal proceedings against the operator other than proceedings alleging contravention of Schedule 2 to the *Gambling Supervision Act 2010*.
12. *Clause 12* empowers a justice of the peace to authorise an authorised person, on submission by the latter of an application for the purpose, to require a person to

attend before the Commission to answer questions, or to produce specified documents or information of a specified class, associated or appearing to be associated with an investigation. If a person required to produce documents fails to do so, that person may be required to state, to the best of his or her knowledge or belief, where those documents are. The Commission, on receipt of any such documents, may take possession of them or take copies of or extracts from them, as it deems necessary. The Commission may also require the person producing them to provide an explanation of all or any of them. Any statements made within this context are precluded from being used as evidence in criminal proceedings against the person making them, unless those proceedings are under clause 9 or are in contravention of Schedule 2 to the *Gambling Supervision Act 2010*. *Clause 12* also provides that a lien on a document produced under the clause remains unaffected by the document's production in accordance with the clause.

13. *Clause 13* provides for a judge to issue a search warrant, on application by the Commission, where attempts under the resulting Act to carry out supervision without obtaining one have failed or will be unsuitable in the circumstances. The warrant enables the relevant premises to be accessed with the use of reasonable force as may be required, which is an element that earlier clauses that permit access to premises do not possess. The person named in the warrant is thereby authorised to access and take possession of relevant documents and to take steps to preserve and prevent interference with them. The warrant also enables the person to take hold of and preserve other apparently relevant documents that the person may happen to come across in the course of his or her search for the documents that are the subject of the warrant. A constable must be present when the warrant is being executed.
14. *Clause 14* allows the sharing of information. The Commission may share non-aggregated data with any of the parties set out in Schedule 2 to the *Gambling Supervision Act 2010* or such other entities as the Commission may prescribe. The Commission may also share information of any description with respect to corporate service providers that provide services to operators, but may only share this information with the Financial Services Authority.
15. *Clause 15* is the first clause in Part 3. It generally empowers the Commission to impose sanctions for non-compliance with AML/CFT legislation, and sets out some measures that can be taken in this regard in addition to those set out in the remaining provisions of the Part.
16. *Clause 16* empowers the Commission to impose restrictions on the holders of permits or licences. Restrictions may be in respect of all or any part of the business of the holder of a bookmaker's permit or a betting office licence ("the holder"), and may affect either all or one or more of the holder's betting offices. Crucially, this measure is only available where the holder contravenes a provision of AML/CFT legislation the contravention of which is not made an offence under that AML/CFT legislation. Before acting under this clause the Commission must notify the holder of its intention to so act and must give the holder an opportunity to make representations as to why the proposed action

should not be taken. The Commission is duty-bound to take those representations into account. Failure to comply with the restrictions imposed in an offence.

17. *Clause 17* empowers the Commission to by written notice add to or amend an operator's licence conditions. This can only be for AML/CFT reasons, and the objectives by which the Commission may be motivated are carefully circumscribed. This clause is expressly stated to be in addition to specified provisions of 2 of the Gambling Acts. Failure to comply with an augmented or amended condition under this clause is an offence.
18. *Clause 18* empowers the Commission to issue directions to an operator, and specifically brings within its ambit similar powers conferred by other clauses. Directions can be issued to mandate the operator to take any of a variety of listed actions. It is specifically here provided that all directions under the resulting Act must be in writing, regardless of whether or not a particular provision empowering the giving of a direction specifically so states or not. A direction must contain a statement of the reasons for its issue. The Commission may vary or revoke a direction, and must also give reasons for any of these actions. Failure to comply with a direction is an offence, and in addition to being prosecuted an operator faces the prospect of public statements, injunctions or remedial orders, and having its controllers regarded as "not fit and proper" persons under the Act; all detrimental occurrences.
19. *Clause 19* empowers the Commission to issue public statements. These may relate to details of any directions given or of contravention of any such direction or a requirement of AML/CFT legislation, or a regulated activity which the subject of the public statement is reasonably believed to be engaging in and which the Commission believes the public ought to be made aware of. Advance notice must be given to the operator or other person likely to be affected by the public statement, and the statement must not be issued earlier than one month after service of the notice unless a condition set out in clause 20 is met. The notice must give reasons for the proposed public statement, must contain a copy of the statement and must state the date on which it is proposed to issue the statement. The Commission is permitted to decline to disclose a reason on the basis that it contains confidential information that would be prejudicial to a third party. It also has the leeway to specify reasons differently as between different persons, even in respect of the same matter.
20. *Clause 20* provides that a public statement must not be issued earlier than 1 month after the date on which notice of the intention to issue the public statement is served. The stated exception to this rule is where either each person identified in the public statement agrees to an earlier date or the Commission decides on reasonable grounds that the public interest in early disclosure outweighs the detriment to the persons identified in the statement as a result of the earlier issue. The earlier date of issue of the public statement may be as early as the very same day on which notice is served. However, persons likely to be affected by the earlier issue of the public statement may appeal to the Tribunal the decision to issue the statement earlier.

21. *Clause 21* empowers the Court to issue an injunction or a remedial order, on application by the Commission. This is permissible where the Commission believes it is likely that a person will contravene or continue contravention of a direction under the resulting Act or AML/CFT legislation. The injunction will restrain the subject of the injunction from taking proscribed action, whereas the remedial order will direct the subject to take any action that the court considers is within the subject's competence and will remedy the contravention in question.
22. *Clause 22* empowers the Commission to impose civil penalties in respect of failure to comply with any stipulation in the resulting Act, whether or not contravention of that stipulation is made an offence. The Commission can also impose a civil penalty in respect of AML/CFT legislation or the furnishing of false, inaccurate or misleading information in purported compliance with AML/CFT legislation. It is specifically provided that civil penalties are an alternative to prosecution and that, where the civil penalty is paid, the offender will thereby acquire immunity from prosecution for the infraction. It is also provided that civil penalties cannot be imposed where revocation of the relevant licence, certificate or permit is being contemplated or has been carried out. Written notice of the imposition of the civil penalty is required, and this must contain the date by which the civil penalty is to be paid. Failure to pay the penalty by that date will revive the possibility of prosecution for the infraction, where applicable. The Commission is specifically precluded from imposing a civil penalty for failure to submit a AML/CFT return, and a direction is stated to be the appropriate response to such a situation. Failure to comply with such a direction is an offence. The Commission is empowered to prescribe additional circumstances in which civil penalties can be imposed and to make further provisions in respect of civil penalties. All civil penalties paid must be placed in and form part of the General Revenue of the Island.
23. *Clause 23* empowers an authorised person to issue a written warning notice to a person who is or has been a director, senior manager or controller (a "relevant person") of an operator. This may be done either before a direction is given under clause 18 or in any other circumstance in which the authorised person considers it appropriate to do so. A warning notice is the least coercive of the sanctions available to the Commission, as it makes requests and proposals as opposed to giving directives. Also, it is not a prerequisite to any other action available under Part 3. However, where such a notice is issued an authorised person must take into consideration any action taken by the relevant person in response to the notice. The notice has a maximum duration of 3 years but will terminate sooner once the Commission is satisfied that any action proposed or requested of the relevant person by means of the notice has been completed to the Commission's satisfaction. The Commission may disclose the circumstances surrounding a warning notice to the notified person's employer or prospective employer or to a company of which the notified person is likely to become an officer.

24. *Clause 24* empowers the Commission to require an operator to appoint or contract a suitable professional who is equipped to remedy any identified deficiencies in compliance with AML/CFT legislation. An assessment of the professional's suitability must be made on the basis of the professional's relevant knowledge, experience and ability to meet deadlines for taking remedial action.
25. *Clause 25* empowers the Commission to attach conditions to a direction. Those conditions will prevent an operator from allowing a person who the Commission considers to be a "not fit and proper person" to carry out certain specified activities. If such a person has already been engaged by the operator, the conditions may prevent the person from being appointed as a director, senior manager or controller, unless the Commission gives written consent to such an appointment. Conditions may also direct that a "not fit and proper" person cease to perform a stated role unless the written consent of the Commission to the person's continuing to perform that role is obtained. Written notice is to be given in advance of the taking of any such measure unless the Commission in appropriate circumstances takes the position that the measure should have immediate effect, in which case the written notice is to be accompanied by a statement of reasons for the immediate effect. The terms of the measure may include conditions and may be revoked or varied from time to time, and in any of those cases the Commission must give written notice to the person concerned. All persons affected by a measure taken under this clause is required to comply with it.
26. *Clause 26* permits the Commission to be more coercive than the preceding clause does in response to its finding that a person is "not fit and proper". The Commission may under this clause impose a prohibition in respect of that person. The prohibition can restrain the person affected from performing any or all of a class of specified functions, and such functions can relate to any specified activity. The person at whom the prohibition is directed must be given an opportunity to make representations. The prohibition must be preceded by notice, following service of which the prohibition comes into operation on the expiry of the time within which it may be appealed or, where it has been appealed, upon the withdrawal of the appeal or the determination of the appeal in favour of upholding the prohibition. Defiance of a prohibition is an offence.
27. *Clause 27* sets out details regarding the notice that must be given before a prohibition is imposed under the preceding clause. It must set out the terms and the grounds of the proposed prohibition, state that the person to be prohibited has 28 days within which to make representations to the Commission in the manner specified by the Commission, and give particulars of the right of appeal that would be exercisable if the prohibition were imposed. The Commission is required to have regard to any representations made under this clause before it imposes the proposed prohibition.
28. *Clause 28* empowers the Commission to vary or revoke a prohibition. On doing so the Commission must give to the person affected a statement of reasons.

29. *Clause 29* requires the Commission to maintain and publish a list of prohibitions. The list must specify the individuals prohibited and the functions to which the prohibitions apply.
30. *Clause 30* empowers the Commission to suspend or revoke any of a list of licences or certificates issued under specified Gambling Acts. This option is close to being a last resort and is generally available when the sanctions provided for in preceding clauses have failed to yield the desired result. The power to suspend or revoke may be exercised in respect of all regulated activities, or any of them, that the affected certificate, permit or licence authorised.
31. *Clause 31* requires the Commission to provide the person to be affected by the proposed suspension or revocation with written notice of the decision to suspend or revoke. Such notice must be accompanied by a statement of reasons for the decision. *Clause 31* also requires the Commission to review a suspension on a regular basis.
32. *Clause 32* provides for both an officer and the body corporate for which the officer works to be prosecuted for an offence committed by the body corporate with the consent or connivance of the officer, or attributable to the neglect of the officer. It is specifically provided that an individual, which the officer will almost invariably be, is liable to the custodial sentence provided for the offence. It is taken as understood that the body corporate cannot be incarcerated.
33. *Clause 33* is the first clause of Part 4. It imposes a penalty for all offences created by the resulting Act for which no penalty is prescribed elsewhere in the Act. In so doing, it echoes clause 22 in providing that criminal proceedings cannot be pursued where the Commission has imposed a civil penalty for the same offence, unless the offender has declined to pay the civil penalty. The clause also provides that prosecutions for offences under the resulting Act can only be commenced by the Attorney General or his or her representative, or the Commission with the written consent of the Attorney General. Any document purporting to be the consent of the Attorney General is admissible in proceedings as *prima facie* evidence of such consent once it is signed purportedly by the Attorney General.
34. *Clause 34* empowers persons aggrieved by a decision made under any of the sections listed in the clause to appeal the decision to the Gambling Appeals Tribunal established under the *Gambling (Amendment) Act 2006*.
35. *Clause 35* provides that all orders made under the resulting Act, with the exception of those made under specified provisions, must be laid before Tynwald.
36. The resulting Act is not expected to have any financial or human resource implications.
37. In the opinion of the member moving the Bill its provisions are compatible with the Convention rights within the meaning of the *Human Rights Act 2001*.
- 38.



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

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Ellan Vannin

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

1 A **BILL** to provide the necessary powers to conduct regulatory oversight of the
2 gambling sector's compliance with Anti-Money Laundering and Countering the
3 Financing of Terrorism legislation; to provide sanctions for non-compliance;
4 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:—

5 PART 1 – INTRODUCTORY

6 1 Short title

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

9 2 Commencement

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

15 3 Interpretation

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

1 “**AML/CFT information**” means information, prescribed under
2 subsection (2)(a) of section 6 (returns), included in AML/CFT
3 returns that are submitted in accordance with section 6;

4 “**AML/CFT legislation**” means the requirements of the following
5 enactments –

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

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

17 “**authorised person**” means a person authorised in writing by the
18 Commission to act on behalf of the Commission;

19 “**bookmaker**” has the same meaning as that given to it in subsection (1)
20 of section 48 (interpretation) of the *Gaming, Betting and Lotteries*
21 *Act 1988*;

22 “**Commission**” means the Isle of Man Gambling Supervision
23 Commission;

24 “**controller**” means a person –

- 25 (a) who, on account of the person’s financial contribution to a
26 body corporate, has power to significantly influence the
27 activities of that body corporate; or
- 28 (b) on whose non-financial contribution a body corporate
29 places such considerable reliance as to be dependent on
30 that contribution in order to function as it normally
31 would;

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

35 “**Court**” means the High Court;

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

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

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“**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**” 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*);

“**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*;

“**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 premises certificate, issued under the *Casino Act 1986*;
- (d) the holder of a bookmaker’s 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*;

1 (f) the holder of a racecourse licence or a totalisator licence,
2 issued under the *Gaming, Betting and Lotteries Act 1988*;

3 (g) the holder of a temporary exemption, issued under the
4 *Gaming, Betting and Lotteries Act 1988*;

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

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

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

11 “**senior manager**” means a person who, by virtue of the person’s role
12 within a body corporate, has powers and responsibilities of
13 sufficient significance to enable the person to directly influence
14 corporate decision-making and corporate activity;

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

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

19 (a) asserts that the Commission has grounds to believe that
20 such activities or circumstances as are specified in the
21 notice are prejudicial to a person’s fitness and propriety;
22 and

23 (b) is accompanied by a statement of the reasons for the
24 giving of it.

25 (2) The Treasury may by order amend the definition of “**operator**” or
26 “**designated gambling operator**”, and any such order will not come into
27 operation until it has been approved by Tynwald.

28 4 Restrictions on scope of application

29 (1) This Act does not extend to businesses that conduct gambling without a
30 proper licence, permit or certificate under the Gambling Acts.

31 (2) Businesses referred to in subsection (1) are subject to the provisions of
32 the Gambling Acts.

33 PART 2 – SUPERVISION AND OVERSIGHT OF COMPLIANCE 34 WITH AML/CFT LEGISLATION

35 5 Duty to provide AML/CFT regulation and oversight

36 (1) Consistently with the regulatory objectives set out in section 5
37 (regulatory objectives) of the *Gambling Supervision Act 2010*, the

- 1 Commission must regulate gambling with a view to securing compliance
2 with AML/CFT legislation.
- 3 (2) In fulfilling its duty under subsection (1), the Commission has and is
4 required to exercise (as it considers appropriate) the powers set out in the
5 remainder of this Part.

6 **6 Returns**

- 7 (1) An operator must, at such frequency as may be determined by the
8 Commission from time to time, submit to the Commission an AML/CFT
9 return that includes AML/CFT information.
- 10 (2) The Commission must prescribe —
- 11 (a) AML/CFT information; and
- 12 (b) the frequency at which an AML/CFT return must be submitted to
13 it in accordance with subsection (1).
- 14 (3) AML/CFT information may be used by the Commission in a National
15 Risk Assessment.

16 **7 On-site inspections and investigations**

- 17 (1) An authorised person —
- 18 (a) may at any reasonable time enter any premises in which gambling
19 is conducted;
- 20 (b) may carry out in those premises inspections and investigations to
21 assess the extent to which the operator complies with AML/CFT
22 legislation; and
- 23 (c) in so doing, must take into account the operator's own procedures
24 for achieving such compliance.
- 25 (2) An authorised person has every power of entry and access as may be
26 necessary for the purposes of subsection (1) and may take possession of
27 all such books, accounts and documents for so long as may be necessary
28 for those purposes.
- 29 (3) An authorised person may, for the purpose of inspecting the transactions
30 of the operator and generally investigating the operator under this
31 section, take copies of all books, accounts and documents in the
32 operator's possession.
- 33 (4) The powers under this section extend to premises —
- 34 (a) where an operator is acting under a temporary exemption issued
35 under the *Gaming, Betting and Lotteries Act 1988*; and
- 36 (b) which the authorised person has reasonable cause to believe are
37 or have been used for any purpose connected with gambling.

- 1 (5) Every operator of whom access to premises in accordance with this
2 section is requested by an authorised person must provide the requested
3 access, and failure to do so without reasonable excuse is an offence
4 punishable on summary conviction by a fine not exceeding £5,000 or
5 custody for a term not exceeding 6 months.

6 **8 Obligations of staff to assist**

- 7 (1) Every member of staff of an operator (“staff member”) must cooperate
8 with inspections under section 7 (on-site inspections and investigations)
9 and must answer questions and provide explanations of records.

10 This obligation is subject to subsection (2).

- 11 (2) Despite subsection (1), no staff member is under an obligation under this
12 Act to disclose any information subject to legal privilege within the
13 meaning of section 13 (meaning of “items subject to legal privilege”) of
14 the *Police Powers and Procedures Act 1998*.

- 15 (3) A statement by a staff member made in compliance with this section may
16 not be used in evidence against that staff member in respect of any
17 criminal proceedings except proceedings under subsection (4).

- 18 (4) A staff member who, without reasonable excuse, contravenes subsection
19 (1) or provides any false or misleading information in purported
20 compliance with subsection (1) commits an offence and is liable on
21 summary conviction to a fine not exceeding £5,000 or to custody for a
22 term not exceeding 6 months, or both.

- 23 (5) It is a defence for a staff member charged with an offence under
24 subsection (4) to prove that he or she did not answer questions or
25 provide explanations in accordance with subsection (1) because doing
26 otherwise would have entailed the divulging of information subject to
27 legal privilege within the meaning of section 13 of the *Police Powers and*
28 *Procedures Act 1998*.

- 29 (6) If a staff member who is required to produce a document or copies of
30 documents fails to do so as required under subsection (1), the authorised
31 person may require the staff member to state, to the best of the staff
32 member’s knowledge or belief, where they are.

- 33 (7) In this section, “**staff member**” includes a director, a manager, an
34 employee or a worker, and a person who performs for a service provider
35 a role equivalent to any of the foregoing.

36 **9 Offences in connection with inspections and investigations**

- 37 (1) A person who —
38 (a) knows or suspects that —
39 (i) an inspection is being or is likely to be carried out under
40 section 7 (on-site inspections and investigations);

- 1 (ii) information is being or is likely to be required under
2 section 10 (power to request information) or section 13
3 (search warrants); or
- 4 (iii) information is being or is likely to be requested under
5 section 11 (procedure and further details for requesting
6 information); and
- 7 (b) falsifies, conceals, destroys or otherwise disposes of, or causes or
8 permits the falsification, concealment, destruction or disposal of,
9 information that the person knows or suspects is or would be
10 relevant to such inspection or investigation or is or would be
11 requested,
12 commits an offence, unless the person proves that the person had no
13 intention of concealing facts disclosed by the information from persons
14 carrying out such an inspection or investigation or requesting such
15 information.
- 16 (2) A person who intentionally obstructs a person exercising powers
17 conferred by section 7 (on-site inspections and investigations) or
18 subsection (2) or (3) of section 13 (search warrants) commits an offence.
- 19 (3) A person who commits an offence under this section is liable —
- 20 (a) on summary conviction, to a fine not exceeding £5,000 or to
21 custody for a term not exceeding 6 months, or both; or
- 22 (b) on conviction on information, to a fine or to custody for a term not
23 exceeding 2 years, or both.

24 **10 Power to request information**

- 25 (1) An authorised person may request, from anyone the Commission has
26 reasonable grounds to believe is in possession of it, information the
27 Commission reasonably requires to enable it to better supervise
28 compliance with AML/CFT legislation.
29 This section is subject to section 11 (procedure and further details for
30 requesting information).
- 31 (2) A person of whom a request for information is made by the authorised
32 person must provide the information within such reasonable time as may
33 be specified by the authorised person in the request or in subsequent
34 correspondence.
- 35 (3) A person who, without reasonable excuse, fails to comply with
36 subsection (2) commits an offence and is liable —
- 37 (a) on summary conviction, to a fine not exceeding £5,000 or to
38 custody for a term not exceeding 6 months, or both; or
- 39 (b) on conviction on information, to a fine or to custody for a term not
40 exceeding 2 years, or both.

11 **Procedure and further details for requesting information**

- (1) An authorised person 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 respect of which a shareholder or 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 an operator is or has at any relevant time been a member.
- (2) If an authorised person has made a request of an operator, the Commission may issue a direction under section 18 (directions) to that operator to secure that effect is given to a request under subsection (1) of section 10 (power to request information); and the direction must include a statement of reasons for its issue.
- (3) A statement by an operator in response to a direction may not be used in evidence against that operator in respect of any criminal proceedings except proceedings alleging contravention of Schedule 2 to the *Gambling Supervision Act 2010*.

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

- (1) A justice of the peace may by written instrument authorise an authorised person to exercise the powers under this section if, on an application made by the authorised person,—
- (a) the justice of the peace is satisfied that there is good reason for the authorised person to do so;
 - (b) the good reason is for the purpose of investigating the affairs, or any aspect of the affairs, of an 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 on or appears to be or to have been carrying on.

These powers are not otherwise exercisable.

- (2) The authorised person may, by notice in writing accompanied by a copy of the instrument issued by the justice of the peace under subsection (1)



- 1 and a statement of the reasons given to the justice of the peace in the
2 application submitted under subsection (1), —
- 3 (a) require the person whose affairs are to be investigated, or any
4 other person who it has reason to believe has relevant
5 information, to attend before the Commission at a specified time
6 and place to answer questions or otherwise furnish information
7 with respect to any matter relevant to the investigation; or
- 8 (b) require any person to produce at a specified time and place —
9 (i) specified documents or copies of documents; or
10 (ii) information of a specified class,
11 associated or appearing to be associated with any matter relevant
12 to the investigation.
- 13 (3) If a person who is required to produce a document or copies of
14 documents fails to do so as required under subsection (2)(b), the
15 Commission may require the person to state, to the best of the person's
16 knowledge or belief, where they are.
- 17 (4) If any documents are produced as required under subsection (2)(b), the
18 Commission may —
19 (a) take possession of all such documents for as long as the
20 Commission considers them necessary;
21 (b) take copies of or extracts from them; or
22 (c) require the person producing them to provide an explanation of
23 any of them.
- 24 (5) Any statement by a person in response to a requirement imposed under
25 this section may not be used in evidence against that person in respect of
26 any criminal proceedings except proceedings alleging contravention of
27 —
28 (a) subsection (2) of section 10 (power to request information); or
29 (b) Schedule 2 to the *Gambling Supervision Act 2010*.
- 30 (6) Where a person claims a lien on a document, its production under this
31 section is without prejudice to the lien.

32 **13 Search warrants**

- 33 (1) Where, on information on oath laid by the Commission, a judge is
34 satisfied in relation to any documents that there are reasonable grounds
35 for believing —
36 (a) that —
37 (i) a person has failed to comply with an obligation under
38 section 10 (power to request information) to produce them
39 or copies of them;

- 1 (ii) it is not practicable to serve a notice under subsection (2) of
2 section 12 (power to require persons to attend before the
3 Commission, etc.) in relation to them; or
- 4 (iii) the service of such a notice in relation to them might
5 seriously prejudice the investigation; and
- 6 (b) that they are on the premises specified in the information,
7 the judge may issue such a warrant as mentioned in subsection (2).
- 8 (2) That warrant is a warrant authorising any person named in it —
- 9 (a) to enter (using such force as is reasonably necessary for the
10 purpose) and search the premises; and
- 11 (b) to take possession of any documents appearing to be documents
12 of the description specified in the information, or to take in
13 relation to any documents so appearing any other steps which
14 may appear to be necessary for preserving them and preventing
15 interference with them.
- 16 (3) If, during the course of a search of premises for documents of a
17 description specified in the information, other documents are discovered
18 that appear to contain evidence in relation to any offence, the person
19 named in the warrant may —
- 20 (a) take possession of those documents; or
- 21 (b) take in relation to them any other steps which may appear to be
22 necessary for preserving them and preventing interference with
23 them.
- 24 (4) A person executing a warrant issued under subsection (1) must be
25 accompanied by a constable.

26 **14 Information sharing**

- 27 (1) The Commission may —
- 28 (a) share non-aggregated data —
- 29 (i) with any or any combination of the parties set out in
30 Schedule 2 to the *Gambling Supervision Act 2010*; or
- 31 (ii) with such other entities as the Commission may prescribe;
32 or
- 33 (b) share information with the Financial Services Authority with
34 respect to corporate service providers that provide services to
35 operators.
- 36 (2) An order under subsection (1)(a)(ii) will not come into operation unless it
37 has first been approved by Tynwald.

PART 3 – SANCTIONS

15 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) 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; or
 - (d) prosecute an 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.

16 Power to restrict holders of permits or licences

- (1) The Commission may by written notice –
 - (a) restrict all or any part of the 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 when the circumstance referred to in subsection (2) obtains.
- (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) Where the Commission exercises the power under subsection (1), the Commission must –
 - (a) notify the holder in writing of the details of the alleged failure to comply; and
 - (b) 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

1 weight to any representations made by or on behalf of the holder in
2 accordance with subsection (3)(b).

3 (5) Failure to comply with a restriction imposed under this section is an
4 offence.

5 **17 Licence conditions**

6 (1) The Commission may by written notice add to or amend an operator's
7 licence conditions for AML/CFT reasons, but in doing so must be
8 motivated by any of the following purposes —

9 (a) to restrict activities until the Commission is satisfied that
10 appropriate controls are in place regarding a specific element of
11 an operator's business; or

12 (b) to require an operator to comply with certain recommendations or
13 guidance.

14 (2) Subsection (1) is in addition to the provisions of section 5A (variation of
15 casino licences) and 12D (certificate conditions) of the *Casino Act 1986*
16 and subsection (3) of section 9 (variation and transfer of licence) of the
17 *Online Gambling Regulation Act 2001*.

18 (3) Failure to comply with a condition as added to or amended under this
19 section is an offence.

20 **18 Directions**

21 (1) The Commission may issue directions to an operator. This power
22 includes the power to issue directions under —

23 (a) subsection (6) of section 22 (civil penalties);

24 (b) section 24 (direction to appoint appropriate expert);

25 (c) section 25 (direction not to appoint an individual); and

26 (d) section 26 (prohibition of “not fit and proper” persons).

27 All such directions must be in writing, regardless of whether or not a
28 particular provision referred to in this subsection expressly so requires.

29 (2) A direction may —

30 (a) require the operator to take such action in respect of the operator's
31 business as is specified in the direction;

32 (b) impose such requirements as are necessary to secure that any
33 business carried on by that operator is in whole or in part
34 suspended or discontinued; or

35 (c) require the operator to provide to the Commission a report —

36 (i) on any other matter that the Commission considers
37 appropriate;



- 1 (ii) in such form as is specified in the direction; and
2 (iii) by a person with relevant professional skills nominated by,
3 or considered acceptable to, the Commission,
4 and must include a statement of the reasons for its issue.
5 The purposes for which a direction may be issued under this subsection
6 are in addition to the purposes for which a direction may be issued
7 under the sections referred to in subsection (1).
- 8 (3) The Commission may revoke or vary a direction under this section. The
9 requirement in subsection (2) to give a statement of reasons applies to
10 revocation and variation as it applies to the issue of a direction.
- 11 (4) If an operator fails to comply with a written direction issued under this
12 section, the operator commits an offence and is liable on summary
13 conviction to a fine not exceeding £5,000 or to custody for a term not
14 exceeding 6 months, or both.
- 15 (5) In addition to having committed an offence, an operator who fails to
16 comply with a written direction issued under this section is liable to —
17 (a) have a public statement issued by the Commission under section
18 19 (public statements);
19 (b) the Commission’s applying to the Court for an injunction or a
20 remedial order under section 21 (injunctions and remedial
21 orders); or
22 (c) have the operator’s controllers regarded by the Commission, in its
23 sole discretion, as “not fit and proper” persons and, accordingly,
24 to the Commission’s taking action under section 26 (prohibition of
25 “not fit and proper” persons).

26 **19 Public statements**

- 27 (1) The Commission may issue a public statement —
28 (a) with respect to, or setting out, any direction that it has given
29 under section 18 (directions) or any of the sections referred to in
30 that section;
31 (b) concerning a person if that person appears to the Commission to
32 have contravened any of the following —
33 (i) a direction given under section 18 (directions) or any of the
34 sections referred to in that section; or
35 (ii) AML/CFT legislation; or
36 (c) concerning regulated activities that —
37 (i) the Commission reasonably believes a person is engaging
38 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 an operator, the Commission must serve notice on that operator before issuing a public statement.

(3) If a public statement will identify a 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 that 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) give the reasons for the decision to issue the statement before the date specified in subsection (1) of section 20 (notice of period for public statements), but only if the condition in subsection (5) is met.

(5) The condition referred to in subsection (4)(d) is that, in accordance with a decision under section 20(2)(b), the statement is to be issued earlier than one month after the date on which the notice was served.

(6) 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.

20 Notice period for public statements

(1) If service of a notice is required under subsection (2) or (3) of section 19 (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.

This subsection is subject to subsection (2).

(2) Without limiting subsection (1), the Commission may issue a public statement at an earlier date if —

(a) each of the persons identified in the 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 public statement on that earlier date outweighs any detriment to the persons identified in the statement as a result of such issue.

- 1 (3) In making a decision under subsection (2)(b), the Commission may
2 choose as the date of issue of a public statement the date of service (if
3 any) of a notice under section 19 (public statements).
- 4 (4) Despite this section, if an appeal is made to the Tribunal and the Tribunal
5 orders that the statement not be issued before any specified date or
6 event, the Commission must not issue the statement before that date or
7 event.

8 **21 Injunctions and remedial orders**

- 9 (1) If, on perusal of an application for an injunction submitted by the
10 Commission, the Court is satisfied that it is likely that a person will
11 contravene (or continue or repeat a contravention of) —
12 (a) a direction given under section 18 (directions);
13 (b) section 24 (direction to appoint appropriate expert);
14 (c) section 25 (direction not to appoint an individual);
15 (d) section 26 (prohibition of “not fit and proper” persons); or
16 (e) AML/CFT legislation,
17 the Court may, if it thinks fit, issue the injunction with the effect of
18 restraining that person from committing (or, as the case may be,
19 continuing or repeating) the contravention.
- 20 (2) If, on perusal of an application for a remedial order submitted by the
21 Commission, the Court is satisfied that there are steps that could be
22 taken to remedy the contravention, the Court may make the remedial
23 order requiring that person, or any other person who appears to the
24 Court to have been knowingly concerned, to take such steps to remedy
25 the contravention as the Court may direct.

26 **22 Civil penalties**

- 27 (1) If the Commission is satisfied that an operator —
28 (a) has contravened any provision of this Act, irrespective of whether
29 or not such contravention is declared by this Act to be an offence;
30 (b) has failed in any respect to comply with AML/CFT legislation; or
31 (c) in purported compliance with AML/CFT legislation, has
32 furnished the Commission with false, inaccurate or misleading
33 information,
34 it may require the operator to pay a civil penalty in respect of the
35 contravention.
- 36 (2) Where the contravention referred to in subsection (1) is an offence, any
37 civil penalty imposed by the Commission under subsection (1) must —
38 (a) be an alternative to prosecution for the offence; and

(b) have the effect, upon payment of it by the operator, of conferring on the operator immunity from prosecution for the offence.

However, the operator will be liable to such prosecution if the operator fails to pay the civil penalty before the deadline indicated in writing by the Commission.

- (3) Despite subsections (1) and (2), a civil penalty cannot be required 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 already been commenced in respect of the failure.
- (4) If the Commission intends to impose a civil penalty, it must give to the operator concerned written notice of the decision, the amount of the civil penalty it proposes to impose and the reasons for the decision.
- (5) The Commission is prohibited from imposing a civil penalty for failure to comply with the requirements of section 6 (returns).
- (6) In respect of failure to comply with the requirements of section 6, the Commission may instead issue a written direction to require the operator to provide the AML/CFT return within a specified timeframe.
- Failure to comply with such a direction is an offence.
- (7) The Commission may prescribe –
- (a) additional circumstances in which a civil penalty may be imposed in lieu of criminal proceedings under this Act; or
 - (b) further provisions about civil penalties,
- and any such order will not come into operation until it has been approved by Tynwald.
- (8) Any amount received as a civil penalty must be paid into and forms part of the General Revenue of the Island.

23 Warning notices

- (1) An authorised person may –
- (a) before the Commission makes a direction under section 18 (directions); or
 - (b) in any other circumstance in which the authorised person considers it appropriate to do so,
- issue a written warning notice under this section to a person who is or has been a director, senior manager or controller (a “relevant person”) of an operator.
- (2) A warning notice may –

- 1 (a) propose that a relevant person take such action as is specified in
2 the notice;
- 3 (b) request a relevant person to propose action; or
- 4 (c) specify action that a relevant person must take and the time
5 within which it must be taken.
- 6 (3) Where a warning notice has been given under this section, the authorised
7 person must, before the Commission —
- 8 (a) issues a direction under section 18 (directions) or section 24
9 (direction to appoint appropriate expert); or
- 10 (b) imposes a prohibition under section 26 (prohibition of “not fit and
11 proper” persons),
- 12 take into account any action taken by a relevant person in response to the
13 warning notice.
- 14 (4) The Commission’s powers under sections 26 (prohibition of “not fit and
15 proper” persons) and 27 (preliminary notices) are not limited by the
16 giving of a warning notice under this section; neither is the giving of
17 such a notice required before the Commission may exercise those
18 powers.
- 19 (5) A warning notice issued under this section—
- 20 (a) has effect for a period of up to 3 years from the date on which it is
21 issued, and in each case the period must be specified in the notice;
22 but
- 23 (b) will terminate sooner than the expiration of the specified period
24 upon the Commission’s indicating in writing that it is content that
25 any action under subsection (2) has been completed to its
26 satisfaction.
- 27 (6) The Commission may disclose the circumstances surrounding a warning
28 notice to —
- 29 (a) an employer who currently employs a notified person;
- 30 (b) a person who has received an employment application from a
31 notified person; provided that, if successful in the application, the
32 notified person would be required to be a relevant person of an
33 operator; or
- 34 (c) a company of which a notified person is, or is likely to become, an
35 officer.
- 36 (7) In subsection (6) —
- 37 “notified person” means a person to whom has been given a notice
38 under subsection (1) that is still effective in accordance with
39 subsection (6); and

1 “officer” means an officer of a company for the purposes of the *Company*
2 *Officers (Disqualification) Act 2009* (see subsection (2) of section 1
3 (disqualification orders: introduction) of that Act).

4 **24 Direction to appoint appropriate expert**

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

14 **25 Direction not to appoint an individual**

- 15 (1) The Commission may attach conditions to a direction so as to prevent an
16 operator from allowing a person who is not a fit and proper person (with
17 respect to the requirements of AML/CFT legislation) from carrying out a
18 role specified in the conditions.
- 19 (2) If, on reasonable grounds, it appears to the Commission that a person is
20 not a fit and proper person —
- 21 (a) to be appointed as a director or senior manager; or
22 (b) to become a controller,
23 of an operator, the Commission may direct an operator not to appoint
24 such person as a director, senior manager or controller, unless it has
25 received the written consent of the Commission.
- 26 (3) If, on reasonable grounds, it appears to the Commission that —
- 27 (a) any director or senior manager of an operator; or
28 (b) any controller of an operator,
29 is not a fit and proper person to continue as such, the Commission may
30 direct that such person must not, without the written consent of the
31 Commission, continue as such a director, senior manager or controller.
- 32 (4) The Commission must give to the operator and to the person concerned
33 written notice of any decision to make a direction under this section,
34 together with a statement of the reasons for the decision.
- 35 (5) Subject to subsection (6), where a notice has been given under subsection
36 (4), the direction will take effect —

- 1 (a) if no appeal under section 34 (appeals to the Tribunal) is made
2 within the period prescribed by the Commission for the purposes
3 of such an appeal, on the expiry of that period; or
4 (b) if there is an appeal under section 34, —
5 (i) where the appellant abandons the appeal, on the date of
6 abandonment;
7 (ii) where the decision of the Commission is confirmed, on the
8 date of confirmation; or
9 (iii) where the decision of the Commission is varied, on such
10 date as the Tribunal directs.
- 11 (6) If the Commission is of the opinion that a direction should have
12 immediate effect, the notice under subsection (4) must contain a
13 statement to that effect together with the reasons for that opinion, and
14 the direction will have effect on the giving of the notice.
- 15 (7) Any direction or consent by the Commission under subsection (2) or (3)
16 may be —
17 (a) given subject to conditions;
18 (b) varied from time to time; or
19 (c) revoked at any time,
20 and the Commission must give written notice to the person concerned of
21 any decision to exercise the power conferred by paragraph (a), (b) or (c).
- 22 (8) A person must not —
23 (a) accept or continue in any appointment referred to in subsection
24 (2)(a) or (3)(a); or
25 (b) become or continue as a controller,
26 in contravention of a direction under this section.
- 27 (9) An operator must not appoint a person in contravention of a direction
28 under subsection (2).
- 29 (10) The Commission must take reasonable care not to continue the
30 appointment of a person in contravention of a direction under subsection
31 (3).

32 **26 Prohibition of “not fit and proper” persons**

- 33 (1) The Commission may impose a prohibition if it appears to the
34 Commission that an individual is not a fit and proper person to perform
35 one or more functions in relation to a regulated activity carried on, or
36 proposed to be carried on, by an operator.
- 37 (2) Before imposing a prohibition, the Commission must give the individual
38 whom it proposes to prohibit an opportunity to make representations in
39 accordance with subsection (1)(d) of section 27 (preliminary notices).

- 1 (3) A prohibition may prevent an individual from performing, either in
2 relation to a particular operator, a specified class of operators, or
3 generally, —
- 4 (a) any function;
- 5 (b) a specified function; or
- 6 (c) a function of a specified class.
- 7 (4) A prohibition may relate to —
- 8 (a) any regulated activity;
- 9 (b) a regulated activity specified in the prohibition; or
- 10 (c) a regulated activity of a class prescribed by the Commission.
- 11 (5) An individual commits an offence if he or she performs, or agrees to
12 perform, a function which he or she is prohibited from performing.
- 13 (6) A prohibition operates subject to subsections (7) to (8).
- 14 (7) Notice of a prohibition (a “preliminary notice”) which meets the
15 requirements of section 27 (preliminary notices) must be served upon the
16 individual prohibited. Service may be effected either personally or by
17 registered post to the individual’s last known address.
- 18 (8) Once a preliminary notice has been served in accordance with subsection
19 (7), a prohibition comes into operation on —
- 20 (a) the expiry of time for appealing against it under section 34
21 (appeals to the Tribunal); or
- 22 (b) if an appeal is brought within that time, —
- 23 (i) on the determination of the appeal in favour of upholding
24 the prohibition; or
- 25 (ii) on withdrawal of that appeal.

26 **27 Preliminary notices**

- 27 (1) A preliminary notice must —
- 28 (a) state that the Commission proposes to impose a prohibition;
- 29 (b) state the terms of the proposed prohibition;
- 30 (c) state the reasons for imposing the prohibition;
- 31 (d) state that, within 28 days, the individual proposed to be
32 prohibited may make representations to the Commission in such
33 manner as the Commission may specify in the preliminary notice;
34 and
- 35 (e) give particulars of the right of appeal under section 34 (appeals to
36 the Tribunal) that would be exercisable if the Commission were to
37 impose the prohibition.

- 1 (2) The Commission must have regard to any representations made in
2 accordance with subsection (1)(d) before imposing a prohibition.

3 **28 Prohibitions: variation and revocation procedure**

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

8 **29 List of prohibitions**

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

12 **30 Suspension or revocation**

- 13 (1) The Commission may, for any of the reasons set out in subsection (2), at
14 any time suspend or revoke —
15 (a) an online gambling licence, issued under the *Online Gambling*
16 *Regulation Act 2001*;
17 (b) a casino licence, issued under the *Casino Act 1986*;
18 (c) a temporary premises certificate, issued under the *Casino Act 1986*;
19 (d) a bookmaker's permit, issued under the *Gaming, Betting and*
20 *Lotteries Act 1988*;
21 (e) a betting office licence, issued under the *Gaming, Betting and*
22 *Lotteries Act 1988*; or
23 (f) a racecourse licence or a totalisator licence, issued under the
24 *Gaming, Betting and Lotteries Act 1988*.
25 (2) The reasons referred to in subsection (1) are that —
26 (a) the Commission is not satisfied that the operation is under the
27 ownership, management or control of fit and proper persons;
28 (b) the operator has failed to comply with —
29 (i) restrictions under section 16 (power to restrict holders of
30 permits or licences);
31 (ii) licence conditions under section 17 (licence conditions);
32 (iii) a direction under section 18 (directions);
33 (iv) a direction to appoint an appropriate expert under section
34 24 (direction to appoint appropriate expert);
35 (v) a direction not to appoint an individual, under section 25
36 (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.

31 Conditions and limitations on the right to suspend or revoke

When exercising its power under section 30 (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.

32 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 the offence —

- (a) was committed with the consent or connivance of an officer of the body corporate; or
- (b) was attributable to neglect on the part of an officer of the body corporate.

(2) The officer as well as the body corporate 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), the individual is liable to any custodial penalty provided for the offence.

(4) In this section, “**officer**” has the meaning assigned by subsection (2) of section 1 (disqualification orders: introduction) of the *Company Officers (Disqualification) Act 2009*.

PART 4 – MISCELLANEOUS

33 Offences and penalties

(1) A person who commits an offence under this Act for which no penalty is provided elsewhere in this Act is liable on summary conviction to a fine not exceeding £5,000 or custody for a term 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

- 1 pay a civil penalty under section 22 (civil penalties) in respect of such
2 contravention, unless the person has declined to pay the civil penalty.
- 3 (3) Proceedings for an offence under this Act are prohibited from being
4 commenced in the Island except —
- 5 (a) by the Commission, with the written consent of the Attorney
6 General; or
- 7 (b) by the Attorney General or his or her representative.
- 8 (4) Any document purporting to be the consent of the Attorney General for
9 the commencement of proceedings for an offence under this Act and to
10 be signed by the Attorney General is, without further proof, admissible
11 as *prima facie* evidence.

12 **34 Appeals to the Tribunal**

- 13 (1) A person aggrieved by a decision made or an action taken by the
14 Commission under any of the sections listed in subsection (2) may appeal
15 to the Tribunal in accordance with section 6 (the Gambling Appeals
16 Tribunal) of the *Gambling (Amendment) Act 2006*, and any such appeal
17 must be heard in accordance with the provisions of Part 4 of that Act.
- 18 (2) The sections referred to in subsection (1) are —
- 19 (a) section 16 (power to restrict holders of permits or licences);
- 20 (b) section 17 (licence conditions);
- 21 (c) section 18 (directions);
- 22 (d) section 19 (public statements);
- 23 (e) section 22 (civil penalties);
- 24 (f) section 24 (direction to appoint appropriate expert);
- 25 (g) section 25 (direction not to appoint an individual);
- 26 (h) section 26 (prohibition of “not fit and proper” persons);
- 27 (i) section 28 (prohibitions: variation and revocation procedure);
- 28 (j) section 30 (suspension or revocation); and
- 29 (k) section 31 (conditions and limitations on the right to suspend or
30 revoke).

31 **35 Tynwald procedure in respect of orders**

- 32 With the exception of orders made under —
- 33 (a) subsection (2) of section 3 (interpretation);
- 34 (b) subsection (1)(a)(ii) of section 14 (information sharing); and
- 35 (c) subsection (7) of section 22 (civil penalties),
- 36 every order made under this Act must be laid before Tynwald.

IN THE KEYS

**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 legislation; to provide sanctions for non-compliance; and for connected purposes.

Approved by the Council of Ministers
for introduction in the House of Keys.

MR BILL SHIMMINS

JUNE 2017