

CHAPTER No. 22

**GAMBLING (AMENDMENT)
ACT 2006**

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GAMBLING (AMENDMENT) ACT 2006

Arrangement of Sections

Section

PART 1

LICENSING OBJECTIVES

- 1.** The licensing objectives
- 2.** Duty to promote the licensing objectives

PART 2

GAMBLING SUPERVISION COMMISSION

- 3.** The Commission

PART 3

AMENDMENT OF GAMBLING ACTS

- 4.** Amendment of the Online Gambling Regulation Act 2001
- 5.** Amendment of other gambling legislation

PART 4

APPEALS

- 6.** The Gambling Appeals Tribunal
- 7.** Appeal to Tribunal
- 8.** Stay pending appeal
- 9.** Powers of Tribunal
- 10.** Rules
- 11.** Appeal from Tribunal

PART 5

MISCELLANEOUS AND GENERAL

12. Transfer of functions

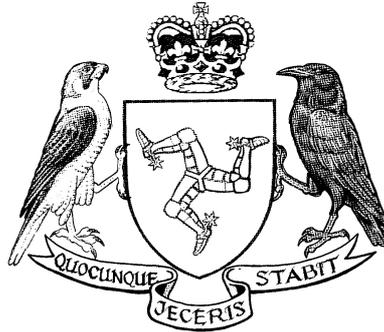
13. Short title and commencement

SCHEDULES

Schedule 1 — The Gambling Control Commissioners

Schedule 2 — Amendments relating to Online Gambling
Regulation Act 2001

Schedule 3 — Amendments relating to other gambling
Acts



Isle of Man } Signed in Tynwald: 17th October 2006
 to Wit } Received Royal Assent: 12th December 2006
 Announced to Tynwald: 12th December 2006

AN ACT

to amend Acts relating to the regulation of gambling; to change the name of the Isle of Man Gambling Control Commissioners; to transfer functions from the Department of Home Affairs; and for connected purposes.

WE, your Majesty's most dutiful and loyal subjects, the Council and Keys of the said Isle, do humbly beseech your Majesty that it may be enacted, and 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 (that is to say):—

PART 1

LICENSING OBJECTIVES

1. The licensing objectives are the objectives of —
 - (a) ensuring that gambling products promoted by operators in the Island can compete effectively throughout the world;
 - (b) facilitating competition;
 - (c) facilitating the provision of modern products and services;
 - (d) ensuring that gambling is conducted in a fair and open way;

The licensing objectives

- (e) protecting children and other vulnerable persons from being harmed or exploited by gambling; and
- (f) preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime.

Duty to promote the licensing objectives

2. In exercising their functions under this Act and any other enactment relating to gambling, it is the duty of the Commissioners to permit gambling, in so far as they think it reasonably consistent with the pursuit of the licensing objectives.

PART 2

GAMBLING SUPERVISION COMMISSION

The Commission

3. (1) The body corporate known as the Isle of Man Gambling Control Commissioners is renamed “the Isle of Man Gambling Supervision Commission”.

(2) In any enactment or other instrument, for “Gambling Control Commissioners” substitute “Gambling Supervision Commission” and for “Commissioners” where used to describe the “Gambling Control Commissioners” substitute “Commission”.

(3) The restatement of the constitution of the Isle of Man Gambling Supervision Commission in Schedule 1 shall have effect.

PART 3

AMENDMENT OF GAMBLING ACTS

Amendment of the Online Gambling Regulation Act 2001 [c.10]

4. The amendments of the Online Gambling Regulation Act 2001 in Schedule 2 shall have effect.

Amendment of other gambling legislation

5. The amendments in Schedule 3 shall have effect.

PART 4

APPEALS

The Gambling Appeals Tribunal

6. (1) There shall be a tribunal to be known as the Gambling Appeals Tribunal (in this Part referred to as “the Tribunal”).

(2) The Tribunal is a Part 2 Tribunal for the purposes of the Tribunals Act 2006 and shall consist of a chairperson appointed under that Act and two members drawn from a panel appointed in accordance with that Act.

(3) The panel shall be drawn from persons —

- (a) who have appropriate experience; and
- (b) who are independent of both the appellant and the Isle of Man Gambling Supervision Commission (in this Part referred to as “the Commissioners”).

(4) If the Tribunals Act 2006 is not in operation the chairperson and members of the Tribunal shall be appointed as necessary by the Council of Ministers.

7. (1) Where the Commissioners —

Appeal to
Tribunal

- (a) refuse an application for, or the renewal or variation of, a licence or permit under an enactment;
- (b) impose a condition subject to which a licence or permit is granted under any enactment;
- (c) vary a licence or permit granted under any enactment;
- (d) vary the conditions subject to which a licence or permit is granted under any enactment;
- (e) cancel a licence or permit under any enactment,

the applicant may appeal to the Tribunal unless the enactment concerned confers a right of appeal to a court or an independent tribunal.

(2) An appeal under this section must be instituted before the end of the period of one month beginning with the date of the decision or action appealed against.

(3) But the Tribunal may permit an appeal to be instituted after the end of that period.

8. (1) A decision or other action specified under section 7(1)(c) to (e) shall have no effect while an appeal under section 7 —

Stay pending
appeal

- (a) could be brought (ignoring the possibility of an appeal out of time under section 7(3)), or

- (b) has been brought and has not yet been either finally determined or abandoned.

(2) But when making such a decision or taking such other action the Commissioners may direct that subsection (1) shall not apply if the Commissioners are satisfied that it is in the public interest to do so (whether on grounds of urgency or otherwise).

Powers of
Tribunal

9. (1) On an appeal under section 7 against a decision or action taken by the Commissioners the Tribunal may —

- (a) affirm the Commissioners' decision or action;
- (b) quash the Commissioners' decision or action in whole or in part;
- (c) substitute for all or part of the Commissioners' decision or action another decision or action of a kind that the Commissioners could have taken;
- (d) add to the Commissioners' decision or action a decision or action of a kind that the Commissioners could have taken;
- (e) remit a matter to the Commissioners (generally, or for determination in accordance with a finding made or direction given by the Tribunal);
- (f) reinstate a lapsed or revoked licence.

(2) In determining an appeal the Tribunal may take account of evidence which was not available to the Commissioners.

(3) Section 7 applies to a decision or action of the Commissioners following remittal under subsection (1)(e).

Rules

10. (1) Rules under section 8 of the Tribunals Act 2006 (rules for tribunals) may —

- (a) regulate the exercise of a right of appeal to the Tribunal;
- (b) specify that a class of person is or is not to be treated as a party to proceedings before the Tribunal for the purposes of this Part;
- (c) provide that a person who, without reasonable excuse, fails to comply with a requirement of a specified kind imposed by or in accordance with the rules commits an offence; and

(d) provide that a person guilty of an offence under paragraph (c) shall be liable on summary conviction to a fine not exceeding £5,000.

(2) This section is additional to but does not prejudice the generality of section 8 of the Tribunals Act 2006.

(3) If the Tribunals Act 2006 is not in operation or no rules under section 8 of that Act apply in respect of the Tribunal, the Tribunal shall —

(a) adopt such practices and procedures as are best calculated to ensure that the proceedings are conducted fairly;

(b) have the power to summon witnesses and take evidence on oath;

(c) have the power to award costs and where the Tribunal has ordered the payment of the costs of one party to an appeal (“the judgment creditor”) by another party (“the judgment debtor”), payment of those costs will be enforced by the judgment creditor in accordance with rules under section 8 of the Tribunals Act 2006.

11. A party to proceedings before the Tribunal under section 7 may appeal on a point of law to the High Court.

Appeal from
Tribunal

PART 5

MISCELLANEOUS AND GENERAL

12. Where an amendment in this Act has the effect of transferring —

Transfer of
functions

(a) any function of the Department of Home Affairs to the Treasury; or

(b) any function of the Isle of Man Gambling Supervision Commission to the Treasury,

paragraph 5 of Schedule 2 to the Government Departments Act 1987 shall, with the necessary modifications, apply in respect of that transfer as it applies in relation to any order under paragraph 1 of that Schedule. [c.13]

13. (1) This Act may be cited as the Gambling (Amendment) Act 2006.

Short title and
commencement

(2) The provisions of this Act shall come into operation on such day or days as may be appointed by order made by the Treasury and different provisions may be brought into operation on different days and for different purposes.

[c.20]

(3) An order under subsection (2) may (without prejudice to the generality of the Interpretation Act 1976) —

- (a) in particular, bring a provision of this Act into force for the purpose of enabling an advance application for a licence or permit to be made, considered and determined;
- (b) include transitional provisions and saving provisions modifying the application of a provision of an enactment pending the commencement of, or pending the doing of anything under, a provision of another enactment;
- (c) save, with or without modification, a provision repealed by this Act;
- (d) make provision of a kind similar to provision made by a provision repealed by this Act;
- (e) modify a provision of this Act for such a purpose.

Section 3

SCHEDULE 1

THE GAMBLING CONTROL COMMISSIONERS

Constitution

1. (1) The Isle of Man Gambling Supervision Commission shall continue to be a body corporate.

(2) The Commission shall consist of —

- (a) a chairman who must be an advocate, barrister or solicitor of at least 10 years standing; and
- (b) 4 other members,

all of whom shall be appointed by the Council of Ministers subject to the approval of Tynwald.

(3) The members of the Commission shall hold office during the pleasure of the Council of Ministers.

(4) The Council of Ministers shall ensure that —

- (a) at least one member of the Commission is a person who has experience of online business;
- (b) at least one member of the Commission is a person having experience of gambling business.

Duties of the Commission

2. (1) The Commission shall undertake the functions conferred on it by any statutory provision.

(2) For the purpose of enabling the Commission to exercise its functions, the Treasury shall —

- (a) engage the services of such persons, being persons qualified and experienced in the fields of —
 - (i) accountancy,
 - (ii) the auditing of computer software, and
 - (iii) statistics and the theory of probability; and
- (b) make arrangements with the Civil Service Commission for the appointment or secondment of officers (being members of the Isle of Man Civil Service or otherwise) for the purpose of the exercise of the Commission's functions.

(3) The terms on which persons may be engaged under subsection (2)(a) shall be such as the Treasury may determine.

SCH. 1

Proceedings

- 3.** The Commission shall —
- (a) determine arrangements for the conduct of its proceedings (which may, in particular, include arrangements for a quorum), and
 - (b) publish those arrangements.
- 4.** (1) The Commission may delegate any of its functions to —
- (a) a member of the Commission,
 - (b) a committee consisting of members of the Commission, or
 - (c) a person appointed or seconded under paragraph 2(2).
- (2) Sub-paragraph (1) applies to any function of the Commission including, in particular —
- (a) a discretionary function;
 - (b) the function of determining whether to revoke a licence or of determining whether to impose a requirement to pay a penalty.

Annual report

- 5.** (1) As soon as is reasonably practicable after the end of each financial year the Commission shall send to the Treasury a report about the activities of the Commission during the year.
- (2) Where the Treasury receives a report under sub-paragraph (1) it shall lay a copy before Tynwald.

Section 4

SCHEDULE 2

AMENDMENTS RELATING TO ONLINE GAMBLING REGULATION
ACT 2001*Online Gambling Regulation Act 2001 (c.10)*

1. In section 3 —

(a) for subsection (1)(a) substitute —

“(a) a transaction effected by a licensed bookmaker and authorised by a betting office licence under Part II of the Gaming, Betting and Lotteries Act 1988 (“the 1988 Act”) that consists of the negotiating or receiving of any bet from a person in the Island by means of a telecommunication;”;

(b) at the end add —

“(3) Regulations may amend paragraphs (a) to (e) of subsection (1).

(4) A person who conducts online gambling by virtue of an exemption under regulations made pursuant to subsection (1)(f) shall pay to the Treasury such fee as may be prescribed in the regulations.

(5) The Treasury may prescribe fees for different exemptions or classes of exemption, different classes of gambling and different classes of persons.

(6) A person who conducts online gambling by virtue of an exemption under subsection (1) shall pay to the Treasury, at such intervals and in such manner as may be prescribed, online gambling duty, which shall be of such amount or calculated in such manner as may be prescribed.”.

2. In section 4 —

(a) in subsection (1), for “Department of Home Affairs (“the Department”)” substitute ““Isle of Man Gambling Supervision Commission (“the Commissioners”)”;

(b) in subsection (2), for “Department” substitute “Commissioners”;

(c) in subsection (3) —

(i) for “Department” substitute “Commissioners”;

(ii) in paragraph (b), for “Isle of Man Gambling Control Commissioners (“the Commissioners”)” substitute “Department of Trade and Industry”;

(d) in subsection (4), for “Department” substitute “Commissioners”;

(e) subsections (5) to (7) are repealed.

SCH. 2

3. In section 5 —
 - (a) after subsection (2) insert —

“(2A) The Treasury may prescribe different fees for different licences or classes of licence, different classes of gambling and different classes of persons.”;
 - (b) in subsection (3), for the words from “amounting to” to the end of the subsection substitute “which shall be of such amount or calculated in such manner as may be prescribed.”;
 - (c) subsections (4) and (5) are repealed;
 - (d) for subsection (7) substitute —

“(7) Where a licence is surrendered under section 7(2), no refund of any fee or duty under this section or any proportion of such a fee or duty shall be allowed.”;
 - (e) subsection (8) is repealed.
4. In section 7(2), for “Department” substitute “Commissioners”.
5. In section 8(1), for “Department” substitute “Commissioners”.
6. In section 9 —
 - (a) for “Department”, wherever occurring, substitute “Commissioners”;
 - (b) in subsection (6), the words “and (5)(b)” are repealed;
 - (c) in subsection (7), the words “, (7) and (8)” are repealed.
7. In section 10 —
 - (a) in subsection (2), the words “, and (b) resident in the Island” are repealed;
 - (b) in subsection (3), for “of integrity and competence” substitute “who satisfies the integrity and competency requirements set by the Commissioners”;
 - (c) after subsection (3) insert —

“(3A) The Commissioners shall, after consulting the Treasury, issue written guidance about the integrity and competency requirements set under subsection (3).”;
 - (d) in subsection (4)(b), sub-paragraph (ii) is repealed.
8. After section 10 insert —

“Designated official outside the Island” **10A.** (1) This section has effect where a designated official is not resident in the Island. SCH. 2

(2) The holder of a licence shall appoint an operations manager who shall be an individual who is resident in the Island and is approved or is of a class of persons approved by the Commissioners for this purpose.

(3) A person shall be treated as approved for the purposes of subsection (2) if that person is an employee of a body that is licensed under section 3 of the Corporate Service Providers Act 2000 and that body is approved by the Commissioners for the purposes of this section. [c.13]

(4) The operations manager shall, when required by notice in writing given by the Commissioners, attend before the Commissioners or a person nominated by them for the purpose.

(5) When requested under subsection (4), the operations manager shall attend at such place and time as is specified in the notice but shall not be required to attend within the five days following the service of the notice.

(6) Without prejudice to section 40 of the Interpretation Act 1976, the service of a notice under subsection (4) may be effected by email or facsimile transmission. [c.20]

(7) If the operations manager cannot for any reason comply with a requirement under subsection (4), the designated official shall attend at the place and time specified in the notice.

(8) The holder of a licence who fails to comply with subsection (2) shall be guilty of an offence and liable on summary conviction to a fine not exceeding £5,000.

(9) An operations manager or designated official who fails to comply with a requirement by the Commissioners under subsection (4) shall be guilty of an offence and liable on summary conviction to a fine not exceeding £5,000.

(10) In proceedings against a person for an offence under subsection (8) or (9) it shall be a defence for that person to show that all reasonable steps were taken and all due diligence was exercised to avoid committing the offence.”.

9. In section 11 —

- (a) subsections (2) and (3) are repealed;
- (b) in subsection (4) —
 - (i) after “Treasury” insert “, the Financial Supervision Commission, the Isle of Man Data Protection Supervisor”;
 - (ii) the words “and the Department” and “or the Department, as the case may be,” are repealed;

SCH. 2

- (c) in subsection (5) —
- (i) after “Treasury” insert “, the Financial Supervision Commission, the Isle of Man Data Protection Supervisor”;
 - (ii) the words “and the Department” and “or the Department, as the case may be,” are repealed;
- (d) in subsection (6), the words “and the Department” are repealed.

10. In section 15, at the end add —

“(5) Before approving and issuing a code of practice under this section the Commissioners shall consult the Treasury.”.

11. Section 19 is repealed.

12. In section 21 —

- (a) in subsection (1)(a), the words “(except section 5)” are repealed;
- (b) in subsection (2), “(3)” is repealed.

13. In section 25 —

- (a) for the definition of “the Commissioners” substitute —

““the Commissioners” means the Isle of Man Gambling Supervision Commission;”;
- (b) the definition of “Department” is repealed;
- (c) in the definition of “prescribed” the words “(except in section 5)” are repealed;
- (d) for the definition of “regulations” substitute —

““regulations” means regulations made by the Treasury under this Act;”.

Section 5

SCHEDULE 3

AMENDMENTS RELATING TO OTHER GAMBLING ACTS

Gaming (Amendment) Act 1984 (c.17)

1. In section 17, for the definition of “the Gaming Board” substitute ““the Gaming Board” means the Isle of Man Gambling Supervision Commission;”.

Casino Act 1986 (c.16)

2. (1) For section 1(1) substitute —

“(1) The Isle of Man Gambling Supervision Commission (in this Act referred to as “the Board”) shall perform the functions conferred on it under this Act.”.

3. Section 2(2) is repealed.

Gaming Betting and Lotteries Act 1988 (c.17)

4. In section 7(4A), after “section” insert “3(2) or”.
5. In section 11(2)(a), the word “public” in both places where the word occurs is repealed.
6. For section 14(1A), substitute —

“(1A) Subsection (1) shall not apply to a person acting as a bookmaker in relation to transactions (other than the negotiating or receiving of any bet from a person in the Island by means of a telecommunication) that are online gambling within the meaning of section 1 of the Online Gambling Regulation Act 2001.”.

7. In section 15, for subsection (2) substitute —

“(2) A betting office licence shall authorise the licensee to effect betting transactions with —

- (a) persons resorting to the premises to which the licence relates, and
- (b) other persons who are within the Island and who are placing bets by means of a telecommunication.”.

8. In section 20 —

- (a) the word “public”, wherever occurring, is repealed;

SCH. 3

- (b) subsection (1A) is repealed;
- (c) in subsection (2), “or (1A)” is repealed.

9. Section 42 is repealed.

10. In section 48 —

- (a) for the definition of “betting office licence” substitute —
““betting office licence” means a betting office licence granted under section 15(2);”;
- (b) the definitions of “public betting office licence”, “public licensed betting office”, “restricted licensed betting office” and “restricted betting office licence” are repealed.

11. In Schedule 1 —

- (a) the word “public” wherever occurring in the expressions “public betting office licence” and “public betting office” is repealed;
- (b) paragraphs 4A, 11(3), 12(1)(d) and (1A) and 14(3A) are repealed.

Gaming, Betting and Lotteries (Amendment) Act 2001 (c.22)

12. Section 12 and the cross-heading is repealed.