

IN THE KEYS

GAMBLING SUPERVISION BILL 2009

Explanatory Memorandum

1. This Bill, which is promoted by the Treasury, makes further provision as to the constitution, status and exercise of functions of the Isle of Man Gambling Supervision Commission, appeals from decisions of the Commission, and the safekeeping of participants' money by online gambling operators.

2. *Clauses 1 to 3* are introductory. *Clause 4 and Schedule 1* provide for the Commission to be a Statutory Board, and make new provision for its constitution, the tenure of office of its members and the exercise of its functions. *Clause 5* sets out the regulatory objectives of the Commission and other matters which it is to have regard. *Clause 6* enables the Commission to make arrangements with other regulators for mutual assistance. *Clause 7 and Schedule 2* impose restrictions on the disclosure of information by the Commission and others. *Clause 8* limits the liability of members and staff of the Commission.

3. *Clause 9 and Schedule 3* extend the scope of the appeal provisions of the Gambling (Amendment) Act 2006. *Clause 10* enables regulations under the Online Gambling Regulation Act 2001 to make provision for the safekeeping of participants' money. *Clause 11 and Schedules 4 and 5* are supplemental.

4. It is not expected that the Bill will have any effect on public revenue, expenditure or personnel.

5. In the view of the member moving the Bill its provisions are compatible with the Convention rights within the meaning of the Human Rights Act 2001.

Arrangement of Sections

Section

Introductory

1. Short title
2. Commencement
3. Interpretation

The Commission

4. Status and constitution of Commission
5. Regulatory objectives
6. Mutual assistance
7. Disclosure of information
8. Liability for exercise of functions

Appeals

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Participants' money

10. Online gambling - participants' money

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11. Minor and consequential amendments and repeals

SCHEDULES —

Schedule 1 — The Commission

Schedule 2 — Disclosure of information

Schedule 3 — New Schedule 4 to 2006 Act

Schedule 4 — Amendment of enactments

Schedule 5 — Enactments repealed

A BILL

to make further provision for the status, constitution and functions of the Isle of Man Gambling Supervision Commission; to make further provision as to appeals from the Commission; to amend the Online Gambling Regulation Act 2001; 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:—

Introductory

1. The short title of this Act is the Gambling Supervision Act 2009. Short title

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

- 10 3. In this Act — Interpretation
“the Commission” means the Isle of Man Gambling Supervision Commission;

“gambling” means —

- [c.17] (a) gaming (within the meaning of the Gaming, Betting and Lotteries Act 1988);
- (b) making, negotiating and receiving bets and wagers; **5**
- (c) organising, managing, promoting or participating in a lottery;
- [c.17] (d) supplying or operating controlled machines (within the meaning of the Gaming (Amendment) Act 1984); **10**

“the gambling Acts” means —

- (a) the Gaming (Amendment) Act 1984;
- [c.16] (b) the Casino Act 1986;
- (c) the Gaming, Betting and Lotteries Act 1988;
- [c.10] (d) the Online Gambling Regulation Act 2001; **15**
- [c.22] (e) the Gambling (Amendment) Act 2006; and
- (f) this Act;

“the regulatory objectives” means the objectives specified in section 5(2).

The Commission

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Status and
constitution of
Commission

- 4.** (1) The Commission shall be a Statutory Board.
- (2) Schedule 1 shall have effect with respect to the constitution, functions and proceedings of the Commission.

Regulatory
objectives

- 5.** (1) The Commission must, so far as is reasonably practicable, exercise its functions in such a way as is — **25**
- (a) compatible with the regulatory objectives set out in subsection (2); and
- (b) in the opinion of the Commission, most appropriate for the purpose of meeting those objectives.
- (2) The regulatory objectives are — **30**

- (a) ensuring that gambling is conducted in a fair and open way;
- (b) protecting children and other vulnerable persons from being harmed or exploited by gambling; and
- 5** (c) preventing gambling from being —
 - (i) a source of crime or disorder,
 - (ii) associated with crime or disorder, or
 - (iii) used to support crime.
- 10** (3) Subject to subsection (1), in discharging its functions the Commission must have regard to —
 - (a) the need for the regulation, supervision and control of gambling to be —
 - (i) effective,
 - (ii) responsive to commercial developments, and
 - 15** (iii) proportionate to the benefits which are expected to result from the imposition of any regulatory burden;
 - (b) the need to use its resources in the most efficient and economic way;
 - 20** (c) the desirability of implementing and applying recognised international standards;
 - (d) the desirability of cooperating with governments, regulators and others outside the Island;
 - (e) the need to safeguard the reputation of the Island;
 - 25** (f) the responsibilities of those who manage the affairs of persons permitted to carry on regulated activities;
 - (g) the international character of gambling; and
 - (h) the desirability of —
 - 30** (i) facilitating the development of the gambling industry in the Island;
 - (ii) securing competition within that industry; and

(iii) ensuring that gambling products promoted by that industry can compete effectively throughout the world.

(4) The Treasury may by order —

(a) specify policies and strategies to be implemented by the Commission in exercising its functions; and **5**

(b) to such extent as is necessary for consistency with those policies and strategies, amend subsection (3).

(5) The Commission must, so far as is —

(a) reasonably practicable, and **10**

(b) consistent with the regulatory objectives,

act in a way which promotes any policy or strategy specified by the Treasury under subsection (4).

(6) An order under subsection (4) shall be laid before Tynwald as soon as practicable after it is made, and if Tynwald at the sitting at which it is laid or at the next following sitting resolves that it shall be annulled, it shall cease to have effect. **15**

Mutual
assistance

6. (1) Subject to subsection (2), the Commission may enter into an agreement with a regulatory authority for the purpose of —

(a) the provision by the Commission of assistance to that authority, and **20**

(b) the provision by that authority of assistance to the Commission,

in regulating, supervising or controlling gambling.

(2) At the request of a regulatory authority, the Commission may investigate any matter relating to the regulation, supervision or control of gambling, and for that purpose may exercise any of the powers conferred on it by any of the gambling Acts. **25**

(3) Subsections (1) and (2) do not permit the disclosure of any information relating to the affairs of any person otherwise than in accordance with Schedule 2. **30**

(4) In this section —

“gambling” includes any activity carried on outside the Island which, if carried on in the Island, would constitute gambling as defined in section 3; **35**

“regulatory authority” means any person or body, whether of a public or private nature, and whether established in the Island or elsewhere, which —

- (a) regulates, supervises or controls gambling, or
- 5 (b) regulates or supervises any trade or business relating to gambling.

7. Schedule 2 shall have effect for the purpose of restricting the disclosure of information by the Commission and others. Disclosure of information

10 8. (1) This section applies to any act or matter done or omitted to be done — Liability for exercise of functions

- (a) in the exercise, or purported exercise, of the functions conferred by or under any of the gambling Acts; or
- (b) in the implementation, or purported implementation, of a mutual assistance agreement under section 6(1).

15 (2) None of the following —

- (a) the Commission,
- (b) any member, officer or employee of the Commission; or
- (c) any other person acting on behalf of the Commission; or
- 20 (d) any person acting pursuant to any authority conferred by the Commission,

shall be liable in damages for, or in respect of, any act or matter to which this section applies unless it is shown to have been done or omitted to be done in bad faith.

25 (3) Subsection (2) does not apply so as to prevent the award of damages made in respect of an act or omission on the ground that it was unlawful as a result of section 6(1) of the Human Rights Act 2001. [c.1]

Appeals

30 9. (1) For section 7(1) of the Gambling (Amendment) Act 2006 substitute — Appeals

“(1) Where the Commissioners —

- (a) take any decision or action specified in Schedule 4, or
- (b) in taking any such decision or action, impose or vary a condition, other than one required by an enactment to be imposed,

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any person aggrieved by the decision, action or condition may appeal to the Tribunal.”.

(2) In section 9 of that Act —

- (a) in subsection (1)(f), after “licence” insert “, permit, certificate or registration”;

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(b) for subsection (2) substitute —

“(2) In determining an appeal the Tribunal —

- (a) may take account of evidence which was not available to the Commissioners;
- (b) so far as practicable, shall seek to achieve the regulatory objectives set out in section 5(2) of the Gambling Supervision Act 2009; and
- (c) shall have regard to —

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- (i) the matters specified in section 5(3) of that Act, and

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- (ii) any policy or strategy specified under section 5(4) of that Act.”.

(3) After Schedule 3 to that Act insert (as Schedule 4) the provisions set out in Schedule 3.

(4) Nothing in this section applies in relation to a decision or action taken before the coming into operation of this section.

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Participants’ money

Online
gambling —
participants’
money

10. In section 21 (regulations) of the Online Gambling Regulation Act 2001, after subsection (1) insert —

“(1A) Regulations under subsection (1) may —

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- (a) make provision as to the treatment to be afforded to money received by the holder of a licence;

- (b) provide that money held by the holder is held on trust;
 - (c) specify the terms and purposes of any such trust; and
 - 5 (d) exclude or modify the operation of section 6(2) in relation to money held on trust in accordance with the regulations.
- (1B) Any institution with which an account is kept in accordance with regulations made pursuant to subsection (1A) shall not incur any liability as constructive trustee where money is wrongfully paid from the account unless the institution —
- 10 (a) permits the payment with knowledge that it is wrongful; or
 - 15 (b) has deliberately failed to make enquiries in circumstances in which a reasonable and honest person would have done so.”.

Supplemental

- 20 **11.** (1) The enactments specified in Schedule 4 are amended in accordance with that Schedule.
- (2) The enactments specified in Schedule 5 are repealed to the extent specified in column 3 of that Schedule.

Minor and consequential amendments and repeals

Section 4(2)

SCHEDULE 1

THE COMMISSION

Constitution

1. (1) The Commission shall consist of not less than 5 persons appointed by the Treasury, subject to the approval of Tynwald.

(2) The Treasury shall appoint one member of the Commission to be chairperson and another to be deputy chairperson of the Commission.

(3) A person may not be appointed or be a member of the Commission if he or she is —

- (a) a member of the Council or the Keys;
 - (b) a member of the Isle of Man Civil Service; or
 - (c) an employee of a Department or Statutory Board.
- (4) The Treasury shall ensure that —
- (a) at least one member of the Commission is an advocate, barrister or solicitor of at least 5 years' standing;
 - (b) at least one member of the Commission is a person with experience of online business; and
 - (c) at least one member of the Commission is a person with experience of gambling business.

Tenure of office

2. (1) A member of the Commission shall go out of office —

- (a) subject to sub-paragraphs (2) to (5), on the expiration of 5 years beginning with the date on which he or she was appointed;
- (b) if he or she becomes disqualified by paragraph 1(3) for being a member of the Commission.

(2) A member of the Commission may be removed from office by resolution of Tynwald.

(3) A member of the Commission may at any time resign on giving to the Treasury notice in writing of his or her intention to do so.

(4) A casual vacancy in the members of the Commission shall be filled as soon as practicable in like manner and subject to the like conditions as the office vacated, but a member appointed to fill such a vacancy shall hold office until the member in whose place he or she is appointed would ordinarily have gone out of office.

(5) Where a member of the Commission goes out of office under sub-paragraph (1)(a) he or she shall continue to be a member of the Commission for

all purposes (except that of filling the vacancy) until his or her successor is appointed. SCH. 1

(6) A retiring member of the Commission shall be eligible to be re-appointed if he or she is otherwise qualified.

(7) Section 3 (tenure of office) of the Statutory Boards Act 1987 shall not apply to the Commission. [c.14]

Exercise of functions

3. (1) The quorum necessary for the transaction of business by the Commission shall be 3 members of the Commission.

(2) Paragraphs 1 (vice chairman), 2(3)(c) (quorum), 7 (compulsory purchase) and 12(1) (directions by Council of Ministers) of Schedule 2 to the Statutory Boards Act 1987 shall not apply to the Commission.

Monitoring and enforcement

4. (1) The Commission shall maintain arrangements designed to enable it to determine whether persons on whom requirements are imposed under any of the gambling Acts are complying with them.

(2) Those arrangements may provide for functions to be performed on behalf of the Commission by any body or person who, in its opinion, is competent to perform them.

(3) This paragraph is without prejudice to paragraph 3 (delegation of functions) of Schedule 2 to the Statutory Boards Act 1987.

Records

5. (1) The Commission shall maintain satisfactory arrangements for —

- (a) recording decisions made in the exercise of its functions; and
- (b) the safe-keeping of those records which it considers ought to be preserved.

(2) This paragraph is without prejudice to the Public Records Act 1999. [c.8]

Staff

6. (1) For the purpose of enabling it to exercise its functions, the Commission 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,

SCH. 1

- (iii) statistics and the theory of probability,
and such other fields as are appropriate for that purpose; and
- (b) make arrangements for the appointment or secondment of persons (whether or not members of the Isle of Man Civil Service) as officers of the Commission.
- (2) The terms on which persons may be engaged under sub-paragraph (1) (other than members of the Isle of Man Civil Service) shall be such as the Commission may determine.

Annual report

- 7.** (1) As soon as reasonably practicable after the end of each year ending on 31st March the Commission shall send to the Treasury a report about the activities of the Commission during that year.
- (2) The annual report shall include a report on the performance of the Commission in —
- (a) achieving the regulatory objectives;
 - (b) fulfilling its obligations under section 5(3); and
 - (c) implementing any policies and strategies specified under section 5(4).
- (3) The report shall also include such information about the effectiveness and efficiency of the Commission in exercising its functions as the Treasury may direct.
- (4) Where the Treasury receives a report under sub-paragraph (1) it shall lay a copy before Tynwald.

Complaints

- 8.** The Commission shall make and publish a document setting out procedures for the making, investigation and adjudication of complaints against the Commission.

Section 7

SCHEDULE 2

DISCLOSURE OF INFORMATION

Restrictions on disclosure of information

1. (1) Subject to paragraph 2, information which is restricted information for the purposes of this paragraph and relates to the business or other affairs of any person shall not be disclosed by a person mentioned in sub-paragraph (3) (“the primary recipient”) or any person obtaining the information directly or indirectly from the primary recipient without the consent of the person to whom it relates.

(2) Subject to sub-paragraph (4), information is restricted information for the purposes of this paragraph if it is obtained by the primary recipient for the purposes of, or in the discharge of the primary recipient’s functions under any of the gambling Acts (whether or not by virtue of any requirement to supply it made under any of those Acts).

(3) The persons mentioned in sub-paragraph (1) are —

- (a) the Treasury and its members;
- (b) the Commission and its members;
- (c) the Gambling Appeals Tribunal and its members; and
- (d) any officer or employee of any person or body mentioned in (a) to (c).

(4) Information shall not be treated as restricted information for the purposes of this paragraph if it has been made available to the public by virtue of being disclosed in any circumstances in which or for any purpose for which disclosure is not precluded by this paragraph.

(5) Any person who contravenes this paragraph is guilty of an offence and liable on summary conviction to custody for a term not exceeding 6 months or to a fine not exceeding £5,000, or to both.

Exceptions from restrictions on disclosure

2. (1) Paragraph 1 shall not preclude the disclosure of information —

- (a) with a view to the institution of or otherwise for the purposes of criminal proceedings in the Island or elsewhere;
- (b) to any constable for the purpose of enabling or assisting that or any other constable to discharge his or her functions;
- (c) with a view to the institution of or otherwise for the purposes of any civil proceedings arising under or by virtue of any of the gambling Acts;
- (d) if the information is or has been available to the public from other sources;
- (e) in a summary or collection of information framed in such a way as not to enable the identity of any person to whom the information relates to be ascertained; or

SCH. 2

- (f) for the purpose of enabling the Civil Service Commission to investigate the conduct of members of the Isle of Man Civil Service.

3. (1) Subject to sub-paragraph (2), paragraph 1 shall not preclude the disclosure of information for the purpose of enabling or assisting any public or other authority in the Island for the time being designated for the purposes of this paragraph by an order made by the Treasury to discharge any functions which are specified in the order.

(2) An order under sub-paragraph (1) designating an authority for the purposes of that sub-paragraph may —

- (a) impose conditions subject to which the disclosure of information is permitted by that sub-paragraph; and
- (b) otherwise restrict the circumstances in which that sub-paragraph permits disclosure.

4. Paragraph 1 shall not preclude the disclosure of any information contained in any register required to be kept under any of the gambling Acts.

5. (1) Subject to sub-paragraph (1), paragraph 1 shall not preclude the disclosure of information to a regulatory authority (within the meaning of section 6); or

- (a) pursuant to an agreement under that section, or
- (b) for the purpose of enabling it to exercise functions corresponding to any of the Commission's functions under any of the gambling Acts.

(2) Sub-paragraph (1) shall not permit the disclosure of any information relating to the affairs of a person other than a regulated person unless —

- (a) that person consents; or
- (b) the Commission has consented to the disclosure in accordance with sub-paragraph (3);

and in this sub-paragraph “regulated person” means a person who carries on, has carried on or intends to carry on any activity for which a licence or permit is required under any of the gambling Acts.

(3) The Commission may consent in writing to a disclosure of information to which sub-paragraph (2) applies if it is satisfied that disclosure is appropriate having regard to all the circumstances of the case, including —

- (a) the regulatory objectives;
- (b) the confidential nature of the information;
- (c) the purpose for which it is required;
- (d) whether the making of the disclosure is proportionate to that purpose;

- (e) the seriousness of the circumstances of the particular case; SCH. 2
 - (f) whether the disclosure (either by itself or in conjunction with other material) is likely to be of substantial value to the body to which it is made;
 - (g) whether the information could be obtained by other means;
 - (h) the standards of confidentiality and information security which will be applied by the recipient; and
 - (i) whether, in a converse case, the recipient would afford similar assistance to the Commission.
- (4) The Commission may by order amend the matters to be taken into account under sub-paragraph (3).

6. Paragraph 1 shall not preclude the disclosure of information by the primary recipient to —

- (a) another person mentioned in paragraph 1(3), or
- (b) a person engaged by the Treasury, the Commission or the Gambling Appeals Tribunal to provide any service to it in the exercise of any of its functions under the gambling Acts.

7. An order under paragraph 3(1) or 5(4) shall be laid before Tynwald as soon as practicable after it is made, and if Tynwald at the sitting at which the order is laid or at the next following sitting resolves that it shall be annulled, it shall cease to have effect.

14 *Gambling Supervision Bill 2009*

Section 9(3) SCHEDULE 3

NEW SCHEDULE 4 TO 2006 ACT

“Section 7(1)(a) SCHEDULE 4

DECISIONS SUBJECT TO APPEAL

Betting

1. The refusal to grant or renew a bookmaker’s permit under section 14 of the Gaming, Betting and Lotteries Act 1988 (“the 1988 Act”).
2. The cancellation of a bookmaker’s permit under paragraph 17 of Schedule 1 to the 1988 Act.
3. The refusal to grant, renew or transfer a betting office licence under section 15 of the 1988 Act.
4. The refusal to approve a designated official under section 17 of the 1988 Act.
5. The refusal of a racecourse licence under section 22 of the 1988 Act.
6. The refusal of a licence authorising the setting up, keeping and operation of a totalisator under section 24 of that Act.

Lotteries

7. The refusal to vary the conditions of a society lottery under section 32(4) of the 1988 Act.
8. The refusal to authorise the promotion of a series of society lotteries under section 32(4A) of the 1988 Act.
9. The refusal to register a society under section 33 of the 1988 Act.
10. The cancellation of the registration of a society under section 33 of the 1988 Act.
11. The refusal to register, or the revocation of the registration of, the manager of a British society lottery under section 33A of the 1988 Act.

Casinos

12. The refusal to renew a casino licence under section 5 of the Casino Act 1986 (“the 1986 Act”).

13. The suspension or revocation of a casino licence under section 5 of the 1986 Act. SCH. 3

14. The imposition or variation of a condition specified in a licence for the sale of liquor under section 8 of the 1986 Act.

Online gambling

15. The refusal to grant, renew, vary or transfer a licence under section 4 of the Online Gambling Regulation Act 2001 (“the 2001 Act”).

16. The imposition or variation of a condition specified in a licence under section 4 of the 2001 Act.

17. The refusal to approve a designated official under section 10 of the 2001 Act.

18. The withdrawal of approval of a designated official under section 10 of the 2001 Act.

19. The refusal to approve an operations manager under section 10A of the 2001 Act.

20. The suspension or cancellation of a licence under section 13 of the 2001 Act.

21. A direction under section 15 of the 2001 Act.

Controlled machines

22. The refusal to grant, renew or amend a certificate under section 3 of the Gaming (Amendment) Act 1984 (“the 1984 Act”).

23. The revocation or suspension of a certificate under paragraph 9 of Schedule 1 to the 1984 Act.

24. On the grant of a certificate, any matter specified in it pursuant to paragraph 6(e) or (f) of Schedule 1 to the 1984 Act.

25. On the renewal of a certificate, the alteration of any matter specified in it pursuant to paragraph 6(e) or (f) of Schedule 1 to the 1984 Act.

26. The refusal of a licence under section 5 of the 1984 Act.

SCH. 3

27. The refusal to register a controlled machine under paragraph 2 of Schedule 2 to the 1984 Act.

28. The deletion from the register of a controlled machine under paragraph 3 of Schedule 2 to the 1984 Act.”.

Section 11(1)

SCHEDULE 4

AMENDMENT OF ENACTMENTS

Statutory Boards Act 1987 (c.14)

1. In Schedule 1, at the end insert —

“The Isle of Man Gambling Supervision Commission.”

Gaming, Betting and Lotteries Act 1988 (c.17)

2. In Schedule 1, in paragraph 19(3), for “notice of an appeal under paragraph 13 may be given” substitute “an appeal under section 7 of the Gambling (Amendment) Act 2006 may be instituted”.

Online Gambling Regulation Act 2001 (c.10)

3. (1) In sections 8(2) and 9(3), for “section 19” substitute “section 7 of the Gambling (Amendment) Act 2006”.

- (2) In section 13(1), for “Department” substitute “Treasury”.

- (3) In section 14(3), for “section 19, the High Court” substitute “section 7 of the Gambling (Amendment) Act 2006, the Gambling Appeal Tribunal”.

Section 11(2)

SCHEDULE 5

ENACTMENTS REPEALED

| <i>Reference</i> | <i>Short title</i> | <i>Extent of repeal</i> |
|------------------|---|--|
| 1984 c.17 | Gaming (Amendment) Act 1984. | In Schedule 1, paragraph 10. |
| 1986 c.16 | Casino Act 1986. | Section 6. |
| 1988 c.17 | Gaming, Betting and Lotteries Act 1988. | Section 33(3). In section 33A(5), the words from “, and that person” onwards. In Schedule 1, paragraphs 13 and 18; and, in paragraph 21, the words “or by the Chief Registrar”. Schedule 4. |
| 2001 c.10 | Online Gambling Regulation Act 2001. | Section 19. In section 25, the definition of “Department”. |
| 2006 c.22 | Gambling (Amendment) Act 2006. | Sections 1 and 2. Section 3(3). Schedule 1. In Schedule 2, paragraphs 11 and 13(b). |

IN THE KEYS

Gambling Supervision

A BILL

to make further provision for the status, constitution and functions of the Isle of Man Gambling Supervision Commission; to make further provision as to appeals from the Commission; to amend the Online Gambling Regulation Act 2001; and for connected purposes.

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

MR. BRAIDWOOD

MAY 2009
