



## **GAMBLING DUTY BILL 2012**

# **EXPLANATORY NOTES**

## **Notes on Clauses**

*These notes are circulated for the information of Members with the approval of the Member in charge of the Bill, Mr Robert William Henderson MHK*

### **PART 1**

### **EXPLANATORY NOTES**

#### **GENERAL NOTE**

This Bill which is promoted by the Treasury is intended to update and, insofar as is possible, simplify the law concerned with the administration of the excise duties on gambling for which the Customs and Excise Division is responsible.

The various duties involved, with the exception of that on National Lottery games, are replaced by a single gambling duty.

The Bill repeals and replaces a number of Acts, and parts of others, to provide a comprehensive but flexible duty structure that allows for adequate control and administration whilst being capable of catering for ongoing developments in technology and the nature of the gambling industry.

The Bill provides powers for Customs and Excise to provide assurance as to the compliance of operators with the law of the Island, to enforce duty debts, and to co-operate with authorities in other jurisdictions to combat unlawful activity connected with gambling, including corrupt practices in sport.

## STRUCTURE OF THE BILL

The Bill is structured as follows –

**Part 1 – Introductory** (*clauses 1 to 7*): deals with the short title of the Bill, commencement, and general interpretation of various terms used in the Bill.

Clause 7 allows the Treasury to amend any of the definitions in Part 1 by regulations.

**Part 2 – Scope of Gambling Duty** (*clauses 8 to 11*): describes the new duty, called “gambling duty”, which would replace general betting duty, online gambling duty, pool betting duty and British society lottery duty.

Part 2 also describes the basis of liability to the duty whilst allowing for the Treasury to be able to change the basis by order.

**Part 3 – Payment of gambling duty** (*clauses 12 to 20*): is concerned with payment of the duty by operators.

It provides for the setting of accounting periods, submission of returns, how any duty would be paid to the Treasury, and for the assessment of duty due. The Part also provides that the “revenue trade provisions” of the Customs and Excise Management Act 1986, which provide general enforcement powers relating to excise duties, apply in relation to gambling duty.

Provision is made for the recovery by operators of overpaid gambling duty, subject to conditions to be prescribed by order. Provision is also made for connected operators to be grouped for the purposes of accounting for duty. The criteria for the treatment of separate operators as connected persons when operating within a network environment can be prescribed in an order.

Regulations will allow for prescribing the returns, for facilitating payment methods (including variation of accounting periods) and use of electronic communications. The procedure whereby an operator can recover overpaid duty can be prescribed by order.

**Part 4 – Enforcement and protection of officers** (*clauses 21 to 26*): is concerned with several aspects of enforcement. Clause 21 allows for the Treasury to make regulations for purposes of enforcement, administration or protection of the revenue. Where necessary, clause 22 permits the Treasury to require security from an operator, and under clause 24 it can recover a debt of duty by means of a Treasury warrant that has the same status as a High Court judgment.

Protection is provided in clause 26 for officers carrying out their duties in enforcement of the Act, providing that anything that they do in such regard would not be an offence under the Act.

**Part 5 - Mutual assistance and international co-operation** (*clauses 27 to 29*): is concerned with the assistance Customs and Excise can provide for other agencies and bodies on- or off-Island in order to counter fraud and other crime, and the assistance that enforcement agencies can provide to Customs and Excise.

The provisions supplement provisions found in other legislation that have established legal gateways for co-operation and the disclosure of information.

**Part 6 – Legal proceedings** (*clauses 30 to 33*): is concerned with offences that may render a person or operator liable to criminal or civil penalties.

Clause 30 is essentially a standard clause. However, it does contain provision that allows distribution of materials or promotion in the Island of gambling with an operator located outside the Island, but only if the operator involved is licensed (or exempt from licensing) in the UK, EEA or in such other place as may be designated by order made by the Treasury.

Clause 31 provides a double jeopardy protection from criminal proceedings if a person has been given a civil penalty for the same contravention. The same civil penalty regime that applies to other forms of excise trade (under the Finance Acts 1994, 2007 and 2008 of Parliament, as they have effect in the Island) is also applied to contraventions involving gambling duty.

Clause 31 also provides that proceedings for offences under the Act can only be commenced by the Treasury or by or with the consent of the Attorney General.

**Part 7 – General** (*clauses 35 to 37*): is concerned with Tynwald procedures for subordinate legislation, financial provisions attributable to the Bill, and amendments made by clauses 36 and 37 and the Schedules to the Bill.

Schedule 1 deals with consequential amendment of other legislation, and Schedule 2 contains the consequential repeals of other legislation.

## **CLAUSE BY CLAUSE NOTES**

### **PART 1 INTRODUCTORY**

#### **Clause 1 – Short title**

This contains the short title of the Bill.

#### **Clause 2 - Commencement**

This deals with when the elements of the Bill shall come into operation. The Bill will come into operation upon Royal Assent, but its various provisions are to be brought into operation by order or orders, and different provisions may be brought into operation at different times. The order or orders can also contain any necessary savings or transitional measures.

#### **Clause 3 – General interpretation**

This contains definitions of various words and terms used in the Bill, including –

- “betting” – which includes “spread betting” with a licensed bookmaker in the Island, “pool betting” and “pari-mutuel betting”, but not on-course betting (which is exempt from duty);
- “betting intermediary” – a person who provides facilities (but not premises) or a service designed to enable the making or acceptance of bets between others;
- “bookmaker” – which includes those who are not licensed;
- “on-course betting”;
- “on-line gambling” – which adopts the same meaning as in the Online Gambling Regulation Act 2001;
- “pool betting” – which has the same meaning as exists in the Pool Betting (Isle of Man) Act 1961;
- “spread bet” – being a contract for differences within section 3 of the Financial Services Act 2008 or the Collective Investment Schemes Act 2008; and
- “user” – which is the term used for the client, customer or punter.

#### **Clause 4 – Meaning of “gambling”**

This Clause provides that the term “gambling” includes gaming, betting, participating in a lottery and online gambling where the operator (defined in Clause 6) is acting in the course of business, and regardless of whether or not licensed in the Island.

However, participating in a lottery forming part of the National Lottery and playing a game of chance or skill on a “controlled machine” (i.e. a gaming or amusement machine controlled by the Gambling Supervision Commission and within the meaning of section 1 of the Gaming, Betting and Lotteries Act 1988) is not to be regarded as gambling for the purposes of the Bill.

Gaming machines in the Island (such as fruit machines and fixed-odds betting terminals located in bookmakers’ premises) are not currently subject to excise duty.

### **Clause 5 – Meaning of “lottery”**

This defines a lottery and deals with situations that involve skill or judgement, or a degree of knowledge, but which are still to be regarded as games of chance and liable to duty.

### **Clause 6 – Meaning of “operator”**

This defines the term as someone involved in –

- the organisation, management or provision of gaming or a lottery;
- carrying on the business of negotiating or receiving bets;
- maintains (or permits to be maintained) on the Island a computer or other device by which means a game or lottery takes place or bets are received; or
- being a betting intermediary.

The term includes someone who is a group operator or a representative operator within the meaning of Clause 13 (which deals with grouped or networked operators).

However, a person who merely provides communication services or software is not an operator.

### **Clause 7 – Amendment of this Part**

This provides that the Treasury can add to, delete or amend any of the definitions contained in Part 1.

## **PART 2**

### **SCOPE OF GAMBLING DUTY**

#### **Clause 8 – Gambling duty**

This Clause defines the duty as a duty of excise, who has to pay it and when.

Duty is payable by an operator and regardless of whether or not the gambling is lawful and licensed in the Island. However, it is only due where a significant part of the activity takes place in the Island, and subsection (4) provides examples of when this would apply.

The duty-rates are prescribed in subsection (5), but the rates and thresholds may be amended by regulations which are subject to prior approval by Tynwald. Regulations may also provide for exemptions from liability to the duty.

New operators must provide the Treasury with at least 7 days notice of the intention to undertake dutiable activity.

The Clause allows a specific exemption from duty where a bet is made for “community benefit”. This would permit exemption where “good causes” benefit from games, such as those organised by or for charities supporting education, sport, culture or some other non-commercial purpose.

#### **Clause 9 – Gambling yield**

This defines the profit (or “gambling yield”) which forms the basis of an operator’s liability to duty. The two basic methods of establishing liability are –

- “net stakes receipts” – which uses the operator’s receipts (calculated in accordance with Clause 10) less the operator’s expenditure of payment of winnings to punters (calculated in accordance with Clause 11); or
- “retained profits” – which uses the profits accruing to an operator in the form of commission, entrance fee or other amount in consideration of a punter being able to participate in gambling.

The net stakes receipts is the traditional method of calculating the duty due from bookmakers, i.e. stakes less winnings, whereas the retained profits basis has been developed chiefly to deal with other types of online gambling, such as person-to-person poker and pari-mutuel betting.

The Treasury may by order amend or add to the methods above should this be necessary. Where an operator is involved in a type of gambling where their liability may vary, the Treasury will be able to determine the predominant type of gambling involved and specify the basis that has to be used to calculate duty liability.

**Clause 10 – Gambling receipts**

This is used to determine how to arrive at the amounts used in the “net stakes receipts” method of calculating duty liability.

Any VAT or “free bets” are disregarded when calculating duty liability.

**Clause 11 – Expenditure on gambling winnings**

This is used to determine the value of winnings used in calculating an operator’s liability to duty using the “net stakes receipts” method.

It includes provision where more than one operator are involved in linked games offering a single prize or prizes, and provides for the value of winnings in other than sterling money (i.e. in the form of prizes or in a foreign currency) to be determined in accordance with regulations.

## **PART 3**

### **PAYMENT OF GAMBLING DUTY**

#### **Clause 12 – Gambling duty payable by operator and others**

This is concerned with the payment of the duty.

The default position is that duty is to be paid by the operator.

However, the Treasury can recover the duty from a person responsible for management of the gambling business, a director (where the operator is a company), or such other person as may be specified in an order made by the Treasury. This allows flexibility in cases involving evasion or avoidance, or other cases involving serious irregularities.

Clause 13 below allows for grouping of operators, for reasons of common ownership or use of networks, and from whom any duty may be recovered.

#### **Clause 13 – Gambling duty payable by two or more operators**

This Clause allows for two or more operators to be treated as a single operator for the purposes of accounting for gambling duty.

The circumstances where such grouping may be permitted are –

- where one operator controls the other(s), or one person controls both or all of them;  
or
- where two or more operators are linked in a network under arrangements permitted by the Gambling Supervision Commission.

Regulations would deal with how applications for grouping are to be made, how any approval may be granted or withdrawn, and any conditions that may be applied to such approval.

Subsections (5) and (6) deal with from whom duty would be recovered. The default position would be that duty would be accounted for by the designated representative of the group. However, as in Clause 12, fallback positions are provided to cater for situations involving evasion, avoidance or other serious difficulties.

#### **Clause 14 – Accounting period and duty payable**

This Clause provides that the default accounting period shall be a calendar month, but that the Collector of Customs and Excise may authorise different periods.

The Clause also provides for regulations to allow adjustments at the end of any 12-month period where the duty liability is based on turnover, and this may be necessary because the level of profits accrued may affect the duty-rate or threshold that should be applied.

If any operator ceases business for more than 28 days they must pay any duty due within the following 28 days.

### **Clause 15 – Returns**

This Clause deals with the submission of duty returns and, *inter alia*, allows for the making of regulations detailing the form and content of the return. It also permits the Treasury to designate which member of a grouping is responsible for submission of the composite return.

### **Clause 16 – Relief for losses**

This permits operators whose gambling yield in any accounting period is a negative figure to carry forward that amount to offset it against their liability in the following period. If the offset produces a negative figure for that following period then that figure may be itself carried forward.

However, there is no entitlement to refunds of any negative amount.

### **Clause 17 – Double duty relief**

This Clause allows the Treasury to make provision by order to allow offset of liability to gambling duty where an operator has paid an equivalent tax or duty on the same transactions in another jurisdiction.

If the operator subsequently received a refund of the foreign tax or duty, subsection (3) allows for the Treasury to recover any unpaid gambling duty.

The arrangements would only apply to countries or territories specified by order, and other conditions and requirements may be prescribed by order. These can include the charging of an application fee, and setting a minimum or maximum amount of relief available.

Any order would not have retrospective effect, and would only apply to duty payments due to the Treasury on or after a date specified in the order.

### **Clause 18 – Regulations about payment of gambling duty**

This Clause is concerned with the making of regulations by the Treasury to prescribe how operators should submit returns and how they should make payment of any duty due. This includes the conditions that may be applied where returns are submitted, or payments made, by electronic means.

The Clause also provides for regulations to –

- require additional information from operators;

- allow operators to operate deferment accounts or make payments by instalments;
- permit payment in currencies other than sterling;
- allow for duty liability to be recalculated (e.g. if an end of year adjustment is required to take account of the duty-rates being linked to the operator's profits);
- require security for duty liability;
- ensure payment of duty remains due should an operator cease business;
- relieve from duty operators where they offer free or discounted gambling, or where duty has been overpaid; and
- provide for what records need to be maintained and retained by operators.

### **Clause 19 – Collecting and enforcing**

This Clause allows for application of the "revenue trade provisions" of the Customs and Excise Management Act 1986 (i.e. sections 121, 123 and 124A to 124G) to operators, with such modification as may be required and included in an order made by the Treasury.

Section 121 of the 1986 Act is concerned with payment of duty and *inter alia* provides for civil penalties in cases of non-payment.

Section 123 deals with the pursuit of debts by means of court judgments and distraint.

Sections 124A to 124G provide general powers with regard to –

- the keeping and production of records by operators, and access by means of a court order if necessary;
- entry and search of premises; and
- offences punishable by civil penalties for failure to comply with the requirements to keep and produce information and records.

The revenue trade provisions are standard ones that are applied in respect of all "revenue trades", i.e. those involving excise duties, and "revenue traders" are defined in section 184(1) of the 1986 Act.

### **Clause 20 – Recovery of overpaid gambling duty**

This Clause provides for the making of an order detailing how overpaid duty may be recovered from an operator. It includes provision for evidence in support of the claim to be provided, and sets a 4-year time limit for seeking such repayments.

The Clause also provides that the Treasury need not repay any overpaid amount if this would unjustly enrich the claimant (i.e. where the repayment would benefit someone who had not, in fact, borne the original charge – perhaps where an operator had passed on the charge to a customer but was then unwilling or unable to compensate them).

**PART 4**  
**ENFORCEMENT AND PROTECTION OF OFFICERS**

**Clause 21 – General administration and enforcement**

This Clause provides for the making of regulations that would govern the general administration of gambling duty, and for the enforcement of the rules and legislation necessary to ensure proper administration and to protect the revenue.

Regulations may be made without prejudice to those made under any other clause.

The matters that may be the subject of regulations under this Clause include –

- the keeping and preservation of records, and their inspection by, or production to, Treasury;
- permitting officers to enter premises used, or suspected of being used, for the purposes of gambling – to inspect those premises and to inspect, remove and copy any records found there which relate to (or appear to relate to) gambling operations on the premises; and
- requiring persons carrying on, or suspected of carrying on, a gambling operation to produce specified records or other information.

**Clause 22 – Security for the protection of revenue**

This Clause allows the Treasury to impose conditions on the remission or repayment of duty, or to ensure the payment of duty. Such conditions include the production of evidence, and the giving of security or further security. Regulations made under Clause 18 would deal with actual procedural arrangements.

**Clause 23 – Recovery of unpaid gambling duty**

Where gambling duty is due, this Clause provides that it is recoverable as a civil debt by means of distress or through the courts. Regulations made under this Clause would provide details, and allow for transitional, incidental or consequential arrangements.

**Clause 24 – Treasury warrants**

This Clause, which is based upon provisions found in Schedule 12 to the Value Added Tax Act 1996, allows for the enforcement of a debt of gambling duty by means of a Treasury warrant, which have the same status as a debt judgment of the High Court.

Treasury warrants have been used for many years as a cost-effective debt recovery mechanism, being available for VAT and income tax debts. Enforcement is by means of the Coroners, and the system is overseen by the Chief Registrar.

### **Clause 25 – Power to set aside Treasury warrants**

This Clause is based upon provisions found in Schedule 12 to the Value Added Tax Act 1996 and is concerned with how Treasury warrants for debts of gambling duty may be set aside if the debt has already been paid, or there has been some error on the face of the warrant or in the manner in which it was served. Applications to set aside a warrant would be made to the Chief registrar.

### **Clause 26 – Protection of officers**

This Clause ensures that where officers are acting to enforce the Act they will, in doing so, be guilty of an offence relating to gambling. This would protect officers, particularly if undertaking covert investigations – for example, placing bets with an unlicensed operator, or holding themselves out as an operator in a “sting” operation against suspected illegal operators.

## **PART 5**

### **MUTUAL ASSISTANCE AND INTERNATIONAL CO-OPERATION**

#### **Clause 27 – Mutual assistance**

This Clause is intended to permit Customs and Excise to co-operate and exchange information with –

- other relevant regulatory and enforcement agencies in the Island; and
- the police.

The Treasury may by order add to the list included in the Clause, which consists of –

- the Gambling Supervision Commission;
- the Financial Supervision Commission;
- the Department of Economic Development;
- the Isle of Man Office of Fair Trading; and
- the Isle of Man Constabulary.

Subsection (2) permits any of the above (or any body added to the list by order) to disclose information received by it to the Treasury for the purposes of assisting the performance of duties under the provisions contained in this Bill.

However, any information provided to Treasury must not be passed on to a third party unless it would otherwise have been permitted by the Clause, or is for the purposes of any proceedings connected to any gambling enactment.

#### **Clause 28 – International co-operation**

This Clause allows the Treasury to make an order allowing the exchange of information with a specified body or person outside the Island. The information involved would have to have been obtained under this Bill, or be capable of being used in its enforcement, and would have to relate to the prevention or investigation of crime.

Subsection (2) requires the Treasury to produce a code of practice governing such exchanges.

#### **Clause 29 – International tax enforcement arrangements**

This Clause would allow the Treasury to make an order giving effect to an international tax agreement, insofar as that agreement related to gambling duty and its foreign equivalents. Arrangements that could be involved include the exchange of information, recovery of revenue debts, and the service of documents.

Subsection (4) requires that the standards of confidentiality applying in respect of any information in the other territory must be at least as strict as those in force in the Island before any disclosure to that territory may take place.

### **PART 6 LEGAL PROCEEDINGS**

#### **Clause 30 – Offences and penalties**

This Clause is concerned with creating offences under the Bill and specifying the penalties for such offences. The offences themselves are similar in nature to those found in other revenue law concerned with gambling, including –

- making false statements or providing false information;
- obstruction of an officer in the exercise of their functions;
- carrying on unlicensed gambling and not accounting for any duty due; and
- advertising or promoting the taking of bets etc for operators located outside the Island (and, hence, on which no duty would be due), unless the operator concerned was licensed (or exempt from such licensing) in the UK or another EEA State.

However, and as with existing gambling revenue law, it would not be an offence for an individual to place a bet etc with an off-Island operator.

### **Clause 31 – General provisions governing offences**

This Clause is concerned with situations where an offence is involved and provides that –

- someone cannot face criminal proceedings if they have had imposed upon them a civil penalty for the breach giving rise to the alleged offence; and
- criminal proceedings cannot be commenced except by the Treasury, by the Attorney General, or with the consent of the Attorney General.

### **Clause 32 – Liability of officers of bodies corporate**

This Clause applies if an offence has been committed and it can be shown that an officer of the body corporate concerned was involved in some way in committing the offence. If this is the case then that officer, as well as the body corporate, is liable for any penalty.

### **Clause 33 – Civil penalties**

This Clause allows for the imposition of civil penalties under section 9 of the Finance Act 1994 (an Act of Parliament), as applied in the Island, for certain contraventions of the Bill –

- failure to provide Treasury with the requisite 7 days' notice of an intention to commence operations that give rise to a duty liability;
- failure to declare liability to duty;
- providing false information to reduce duty liability; or
- contravention of any provision contained in regulations made under this Bill.

As outlined in relation to Clause 32, a person cannot be liable to both a civil penalty and criminal penalty for the same breach.

## **PART 7 GENERAL**

### **Clause 34 – Tynwald procedure**

This deals with the procedure for making of orders and regulations.

Regulations (except for those made under Clause 8(8), and hence being concerned with changes to duty-rates and duty-rate thresholds) must be laid before Tynwald as soon as practicable after they are made.

Regulations made under Clause 8(8) would require formal approval by Tynwald before they can come into operation.

With the exception of commencement orders bringing into operation various provisions of the Bill, orders must be approved by Tynwald before they can come into operation.

### **Clause 35 – Financial provision**

This Clause allows that any increase in expenses resulting from this Bill is to be paid by the Treasury.

### **Clause 36 and Schedule 1 – Amendment of enactments**

Schedule 1 to the Bill lists consequential amendments required to –

- the Pool Betting (Isle of Man) Act 1961;
- the Gaming, Betting and Lotteries Act 1988; and
- the Online Gambling Regulation Act 2001.

### **Clause 37 and Schedule 2 – Enactments repealed**

Schedule 2 to the Bill lists the repeals arising as a consequence of this Bill –

- Part I (except for section 2) and section 15(1)(d), (g) and (h) of, and the Schedule to, the Pool Betting (Isle of Man) Act 1961;
- all of the Pool Betting (Isle of Man) Acts 1965 and 1970;
- all of the Betting Act 1970;
- entries in Schedule 2 to the Gambling Laws (Amendment) Act 1976 that refer to section 4(3)(a) and (b) of the Pool Betting (Isle of Man) Act 1961;
- paragraph 1 of Schedule 4 to the Customs and Excise Management Act 1986;
- paragraph 4 of Schedule 7 to the Gaming, Betting and Lotteries Act 1988;
- sections 3(6), 5(3) and (6) and 14(2) of the Online Gambling Regulation Act 2001;
- section 10 of the Gaming, Betting and Lotteries (Amendment) Act 2001; and
- all of the Online Gambling Duty Regulations 2008 – which will be replaced by new regulations made under provisions contained in the Bill.