



Statutory Document No.94/06

THE ONLINE GAMBLING REGULATION ACT 2001

THE ONLINE GAMBLING (TECHNICAL SUPPORT AND DISASTER RECOVERY) (AMENDMENT) REGULATIONS 2006

Laid before Tynwald April 2006

Coming into operation 15th February 2006

In exercise of the powers conferred on the Department of Home Affairs by sections 3(1)(f), 3(2), 21(1)(a) and 21(1)(i) of the Online Gambling Regulation Act 2001¹, and of all other enabling powers, the following Regulations are hereby made:

1 Citation, commencement and interpretation

(1) These Regulations may be cited as the Online Gambling (Technical Support and Disaster Recovery) (Amendment) Regulations 2006 and shall come into operation on 15th February 2006.

(2) In these Regulations:

"Accredited Disaster Recovery Facilities Provider Application" means the application in the prescribed form to host, maintain and support disaster recovery facilities;

"Accredited Disaster Recovery Facilities Provider's Notice Form" means the notice in the prescribed form containing the e-mail address and contact details of the person at the accredited disaster recovery facilities provider deemed appropriate by the accredited disaster recovery facilities provider to receive notices from the Commissioners;

Price £1.70 Code B

¹ 2001 c.10

<i>"Accredited Disaster Recovery Facilities Provider"</i>	means a hosting and technical services provider accredited pursuant to Regulation 10;
<i>"Act"</i>	Means the Online Gambling Regulation Act 2001;
<i>"Advertising Regulations"</i>	Means the Online Gambling (Advertising) Regulations 2001 ² ;
<i>"Affiliate"</i>	means any subsidiary or holding company of a company and any subsidiary of any such holding company;
<i>"Application"</i>	means the application by the overseas licensed operator in the prescribed form to utilise disaster recovery facilities in the Isle of Man;
<i>"Commissioners"</i>	Means the Isle of Man Gambling Control Commissioners;
<i>"Department"</i>	means the Department of Home Affairs of the Isle of Man Government;
<i>"Disaster"</i>	means any act or occurrence beyond the reasonable control of the overseas licensed operator including but not limited to natural disasters such as violent storms, earthquakes, tidal waves, floods and/or lightning; explosions, fires and/or destruction of hardware, software, middleware, telecommunications, wireless and satellite systems; war (whether declared or not), civil war, riots, terrorism, acts of sabotage and/or piracy; any incidental or unplanned shut down or imminent shut down, disruption or unplanned interruption to computer systems or telecommunications where all the above result in the sites not being or not being immediately available to players (provided this is materially worse than the normal periods of delay experienced by players in accessing the relevant overseas licensed operator's site or sites) or where the service to the players provided by the overseas licensed operator is materially impaired;
<i>"Disaster Recovery Facilities"</i>	means the hardware, software and middleware located in the Isle of Man to be used by an overseas licensed operator to

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wholly or partially host and support the sites in the event of a disaster, pursuant to these Regulations;

"Disaster Recovery Facilities Provider" means the person providing hosting and technical support utilising the disaster recovery facilities;

"Game" and "Gaming" Means the same as defined under the Act;

"Minister" Means the Minister for the Department;

"Notice Forms" means the overseas licensed operator's notice form, the overseas regulator's notice form and the accredited disaster recovery facilities provider notice form;

"Online Gambling" Means the same as defined under the Act;

"Overseas Infrastructure and Systems" means the hardware, software and middleware located within the jurisdiction of the overseas regulator which hosts and supports the sites;

"Overseas Licence" means a licence to provide online gambling services not granted under the Act;

"Overseas Licensed Operator's Notice Form" means the notice in the prescribed form containing the e-mail address of the person at the overseas licensed operator deemed appropriate by the overseas licensed operator to receive notices from the Commissioners;

"Overseas Licensed Operator" Means a person holding an overseas licence;

"Overseas Regulator's Notice Form" means the notice in the prescribed form containing the e-mail addresses and contact details of the person at the overseas regulator deemed appropriate by the overseas regulator to receive notices from the Commissioners;

"Overseas Regulator" means a person or entity responsible for the issuance of the overseas licence and the ongoing regulation of an overseas licensed operator;

"Player" means in relation to online gambling a person participating in online gambling with the overseas licensed operator via the

sites;

"Sites"

means Internet websites each with unique domain names via which players may access online gambling services supplied by the overseas licensed operator; and

"Wager"

means the stake or cost of participation in each specific game or the backing of a choice for a specific event.

2 Provision of Regulations and Applications under these Regulations

- (1) These Regulations are made pursuant to section 3(1)(f) of the Act and the activity prescribed for the purpose under that section is the provision of disaster recovery facilities in the Isle of Man, subject to these Regulations, made pursuant to section 21(1)(a) of the Act.
- (2) Any reference to applications or forms under these Regulations will be in such format and require such data as the Commissioners may prescribe from time to time with the approval of the Department.

3 Location of Disaster Recovery Facilities

- (1) The Commissioners will permit disaster recovery facilities located in the Isle of Man to be utilised by overseas licensed operators provided the following conditions set out in Regulations 3(2) to 3(12) inclusive are met.
- (2) The disaster recovery facilities must be hosted, maintained and supported solely by accredited disaster recovery facilities providers.
- (3) The overseas licensed operator wishing to use the disaster recovery facilities has provided sufficient information in the prescribed form and supporting data sufficient to satisfy the Commissioners that:
 - (a) in jurisdictions in respect of which the overseas licensed operator requires the disaster recovery facilities in connection with its overseas infrastructure and systems, the overseas regulators of any such jurisdiction (or its agent authorised by the Department for that purpose) have inspected and certified the technical integrity of the proposed disaster recovery facilities and the fitness and probity of the accredited disaster recovery providers; and

- (b) all of its overseas licences granted by any overseas regulator are in full force and effect; it is fully compliant with all licence terms, relevant legislation and regulations; it has received no notice that any such licence is in jeopardy, or that it will not be renewed; or if it has received a notice that any such licence is in jeopardy or that any such licence will not be renewed this is not as a result of any act or omission on the part of the overseas licenced operator.
- (4) The systems, legislation and regulations pertaining to the issuing of overseas licences and ongoing probity checks undertaken by all of the overseas licensed operator's overseas regulators are sufficient in the opinion of the Commissioners to address all or any issues which the Commissioners may regard as critical to the integrity of the overseas licensed operator and the fairness of its online gambling business, including, but not limited to, exclusion of any minor from online gambling on the sites, anti-money laundering checks of players, segregation of player funds, minimum liquidity requirements of the overseas licensed operator, the prompt payment of player winnings, segregation of unutilised deposits, assistance for problem gambling and the fairness and transparency of player terms, conditions and promotions.
- (5) All of the overseas licensed operator's overseas regulators have supplied the Commissioners with the overseas regulator's notice form and have confirmed in the prescribed form that each of them has been authorised by the overseas licensed operator to make such disclosures of data and records relating to the overseas licensed operator and its suppliers (to which it has access and as the Commissioners may require) to satisfy the Commissioners with regard to the integrity of the overseas licensed operator and the fairness of its operations for the duration of the period that the overseas licensed operator is permitted to use the disaster recovery facilities provided that nothing in this Regulation shall oblige the Commissioners to obtain disclosure of such data and records where they are satisfied (acting reasonably) that the relevant overseas regulators are sufficiently rigorous in procuring and supervising the integrity of the overseas licensed operator and the fairness of its operations.
- (6) All of the overseas licensed operator's overseas regulators have confirmed in the prescribed form that each of them will, as soon as reasonably practicable, notify the Commissioners in writing insofar as the overseas operator's licence is in jeopardy, withdrawn or revoked, or unlikely to be renewed, or if any individual required to disclose personal information for the continuance of any licence has failed to do so,

or has done so and such individual is the subject of investigation by the relevant overseas regulator.

- (7) The overseas licensed operator has placed and will maintain in a prominent position its player terms and conditions on all of its sites that will or may be dependent on the disaster recovery facilities, notification to players in all languages used on the relevant site that its disaster recovery facilities are located in the Isle of Man but that for the duration of their use, should it prove necessary, all transactions will continue to take place in the jurisdiction where its overseas licence is issued and that the overseas regulator will continue to regulate and oversee the overseas licensed operator's online gambling business.
- (8) The overseas licensed operator has certified in the prescribed form that any intellectual property, software or content hosted on the disaster recovery facilities is not the subject of any claim, dispute or litigation by any third party.
- (9) Each application for the use of disaster recovery facilities must be made by the entity or individual holding the overseas licence.
- (10) Each application must disclose names of all the sites operating under each overseas licence, but only insofar as such licence is in a jurisdiction in respect of which the overseas licensed operator requires to use disaster recovery facilities.
- (11) Each application must be accompanied by a copy of all the overseas licensed operator's overseas licences and the current legislation and regulations and orders affecting such licences, together with the overseas licensed operator's notice form and application fee of £10,000 filed at the address specified on the application and overseas licensed operator's notice form.
- (12) The Commissioners may in addition require any information or data not included in the application form insofar as they consider, in their absolute discretion, that such information or data is necessary in order to assess whether the overseas licensed operator should be permitted to use the disaster recovery facilities.

4 Issuance of Authorisations for Disaster Recovery Facilities

- (1) The Commissioners will as soon as reasonably practicable after receiving the application determine in their absolute discretion whether the overseas licensed operator can utilise the disaster recovery facilities.

- (2) The Commissioners will serve notice on the overseas licensed operator within seven days of the decision being made under Regulation 4(1), notifying the addressees set out in the overseas licensed operator's notice form of their decision.
- (3) The Commissioners may attach such written conditions to any issuance of authorisation as they deem appropriate, and such conditions will be set out in the notice served under Regulation 4(2).

5 Obligations of the Overseas Licensed Operator and the Overseas Regulator after Authorisation by the Commissioners

- (1) After the overseas licensed operator is authorised pursuant to Regulation 4 and for the duration that the overseas licensed operator is authorised to utilise disaster recovery facilities the overseas licensed operator will:
 - (a) notify the Commissioners immediately upon becoming aware of any change to the information contained in its application, and update both the application and the overseas licensed operator's notice form where appropriate and file such updated form at the address specified on the application and overseas licensed operator's notice form;
 - (b) procure that those overseas regulators referred to in Regulation 3(3) will, (or its agent authorised by the Department for this purpose will) make regular inspections of the disaster recovery facilities (and no less than twice in any 12 month period) and certify in the prescribed form that such overseas regulator continues to be satisfied with the technical integrity of the disaster recovery facilities and the probity of the disaster recovery facilities provider;
 - (c) no later than on the first anniversary of issuance of the authorisation pursuant to Regulation 4 pay to the Commissioners an annual fee of £5,000, and on or before each anniversary thereafter; and
 - (d) comply with these Regulations.
- (2) For the duration that the overseas licensed operator is using the disaster recovery facilities it will ensure that any content on any of the sites hosted by the disaster

recovery facilities provider complies with Regulation 3(2-3) of the Advertising Regulations.³

6 **Activation and Deactivation of Disaster Recovery Facilities**

- (1) The Commissioners will permit disaster recovery facilities to go live and to remain live if the following conditions are met:
 - (a) the overseas regulator has certified in writing that a disaster has occurred in the overseas jurisdiction which has affected at least one overseas licensed operator (which overseas licensed operator has located disaster recovery facilities in the Isle of Man pursuant to Regulation 3) which requires the immediate utilisation of the disaster recovery facilities and that the requirement for use of such disaster recovery facilities is likely to be less than 45 days; and
 - (b) the accredited disaster recovery facilities provider certifies to the Commissioners that the disaster recovery facilities are being activated prior to activation occurring (and no less than twelve hours before activation) or where this is not possible due to no fault of the accredited disaster recovery facilities provider after activation has occurred (and no more than twelve hours after activation).
- (2) In instances where the disaster has impacted upon the overseas infrastructure and systems of more than one overseas licensed operator (in the same jurisdiction) utilising the disaster recovery facilities, any such overseas licensed operators must notify the Commissioners as soon as it is able to resume full reliance on its overseas technical infrastructure and systems (within no less than 24 hours of this occurring). Within 12 hours of receiving such notification from the overseas licensed operators or the Commissioners holding a reasonable belief that the overseas licensed operator has failed to provide the notification within the specified time limits, the accredited disaster recovery facilities provider must immediately deactivate the disaster recovery facilities for the relevant overseas licensed operator and confirm in writing to the Commissioners that this has been completed.
- (3) The periods for which the disaster recovery facilities are utilised by the overseas licensed operator will not exceed 30 days in aggregate in any 12 month period. Subject to the Commissioners' discretion this time may be extended for such further

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periods as the Commissioners think fit, if in their absolute discretion and having consulted with the overseas licensed operator and the accredited disaster recovery facilities provider they are satisfied that the overseas licensed operator's reliance on the disaster recovery facilities has been minimal relative to its online gambling business.

- (4) Subject to the Commissioners' discretion the time periods specified in Regulation 6(3) may in addition be extended provided that where an additional 60 day aggregate period in any 12 month period is required by the overseas licensed operator, approval by the Minister is given and, where an additional 90 day aggregate period in any 12 month period, approval by the Council of Ministers is given.

7 Severe Disaster

In circumstances where the Commissioners are of the view that the disaster is so severe that the overseas regulator would not be able to notify the Commissioners that the disaster has occurred under Regulation 6(1)(a) or the overseas regulator has informed the Commissioners that it is likely that the disaster recovery facilities will be utilised for periods in excess of 45 days, the Commissioners may in their discretion notify the overseas licensed operator that the overseas licensed operator is permitted to utilise the disaster recovery facilities but only provided such overseas licensed operator makes an application for a licence under the Act within 14 days of receiving notice to this effect from the Commissioners to the addressees specified in the overseas licensed operator's notice form.

8 Residual Powers of Commissioners

The Commissioners may in their absolute discretion waive all or any of the Regulations (or any specific part of the Regulations) in relation to all overseas licensed operators as distinct from any specific overseas licensed operators or class of overseas licensed operators under Regulations 3 and 6 above provided they are satisfied that to do so would not thereby jeopardise the integrity and purpose of these Regulations or the Act.

9 Revocation and Suspension of the Overseas Licensed Operators' use of the Disaster Recovery Facilities

- (1) The Commissioners may in their absolute discretion revoke or suspend any overseas licensed operator's use of the disaster recovery facilities if the Commissioners are of the view that the overseas licensed operator:

- (a) is not taking sufficient steps to ensure that its overseas technical infrastructure and systems have sufficient capacity to avoid having to place reliance on the disaster recovery facilities; or
 - (b) is in breach of the Regulations as set out in Regulations 3 and 5 provided that the Commissioners may in their absolute discretion permit certain breaches to be cured within a specified time frame (such obligations being set out in a notice to the addressees set out in the overseas licensed operator's notice form) provided that by doing so would not thereby jeopardise the integrity and purpose of these Regulations or the Act.
- (2) Such revocation or suspension notice will be served on the overseas licensed operator, the overseas regulator and the relevant accredited disaster recovery facilities provider to the addressees specified in the notice forms, as soon as reasonably practicable after the decision is made notifying the addressees of the decision to revoke or the period of suspension, if relevant, save that only the notice to the overseas licensed operators will contain the reason or reasons for such decision.
- (3) The Commissioners may in their absolute discretion suspend such revocation notice for such periods as the Commissioners think appropriate if the overseas licensed operator makes an application for an online gambling licence under the Act, or if such overseas licensed operator has notified the Commissioners, its overseas regulators and the disaster recovery facilities provider in writing that it no longer wishes to utilise the disaster recovery facilities.

10 **Accredited Disaster Recovery Facilities Provider**

- (1) Only accredited disaster recovery facilities providers may provide disaster recovery facilities and such accreditation is conditional upon:
- (a) the proposed overseas disaster recovery facilities provider filing an application to the Commissioners in the prescribed form (at the address set out in such form) accompanied by the disaster recovery facilities provider notice form and the prescribed fee of £5,000 together with such information and data as the Commissioners may require relating to the proposed disaster recovery facilities and related systems and procedures and the individuals or entities owning and controlling the proposed disaster recovery facilities provider;

- (b) the disaster recovery facilities provider certifying that it owns or controls all of the premises where the proposed disaster recovery facilities will be located; and
 - (c) the Commissioners being able to access and inspect the disaster recovery facilities at all times on reasonable notice.
- (2) The Commissioners will notify the applicant disaster recovery facilities provider as soon as practicable (to the addressees specified in the disaster recovery facilities provider's notice form) whether it has become accredited. The Commissioners may in their absolute discretion attach such written conditions to the accreditation as they see fit, which will be set out in the notice served on the applicant disaster recovery facilities provider.

11 Obligations of the Accredited Disaster Recovery Facilities Provider

- (1) In addition to compliance with its obligations under Regulation 6 the accredited disaster recovery facilities provider must:
- (a) as soon as reasonably practicable notify the Commissioners of any change to the information contained in the disaster recovery facilities provider's application including alterations to the details contained in the disaster recovery facilities provider notice form;
 - (b) as soon as reasonably practicable notify the Commissioners in writing of any fact or matter of which it becomes aware which could impact upon the integrity of the disaster recovery facilities or the probity or integrity of the overseas licensed operator;
 - (c) provide the Commissioners with such additional data as the Commissioners may require (and within such reasonable time frames as the Commissioners may require from time to time); and
 - (d) no later than on the first anniversary of the issuance of the accreditation under Regulation 10 to pay to the Commissioners an annual licence fee of £5,000 and on or before each anniversary thereafter.
- (2) No accredited disaster recovery facilities provider may permit an overseas licensed operator to activate its disaster recovery facilities with the disaster recovery facilities provider unless the Commissioners have verified that the overseas licensed operator

has received permission pursuant to Regulation 4(1) and it is in receipt of a valid notice from the Commissioners pursuant to Regulation 4(2).

- (3) No accredited disaster recovery facilities provider may permit an overseas licensed operator to continue to utilise the disaster recovery facilities, unless it certifies to the Commissioners in writing each seven day period the facility is used (relating to the previous seven day period) that it has monitored the content hosted at the disaster recovery facilities and that such content did not breach Regulation 3 (2-3) of the Advertising Regulations⁴. If it is unable, or does not so certify, the disaster recovery facilities provider must deactivate the disaster recovery facilities for such overseas licence operator and notify the Commissioners and the overseas licensed operator to that effect.
- (4) No accredited disaster recovery facilities provider may permit an overseas licensed operator to continue to utilise the disaster recovery facilities in circumstances where the Commissioners have notified the addressees (specified in the disaster recovery facilities provider notice form), that the accredited disaster recovery facilities provider can no longer do so.
- (5) No accredited disaster recovery facilities provider may maintain an overseas licence nor may it provide disaster recovery facilities to any of its affiliate entities.

12 **Termination of the accreditation**

- (1) Insofar as the accredited disaster recovery facilities provider is in breach of its obligations under Regulations 10 and 11 the Commissioners may in their absolute discretion revoke or suspend the accreditation, permit the cure of such breaches within a specified time frame or impose such additional conditions on such accreditation as they see fit provided they are of the view that to do so would not have a materially deleterious effect on the overseas licensed operator's business or jeopardise the integrity and purpose of these Regulations or the Act.
- (2) As soon as reasonably practicable after the Commissioners make a decision in relation to Regulation 12(1) (above) such notice of revocation, requirement to cure or the imposition of additional conditions will be set out in a written notice which will be served on the addressees specified in the accredited disaster recovery facilities provider's notice form, together with the reasons for the Commissioners' decision.

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- (3) Upon receipt of a notice that the disaster recovery facilities provider's accreditation has been revoked or suspended the disaster recovery facilities provider must deactivate all disaster recovery facilities.
- (4) The Commissioners may decide in their absolute discretion to permit the disaster recovery facilities of the disaster recovery facilities provider whose accreditation has been withdrawn to be utilised by the overseas licensed operator for a period of up to 30 days after such accreditation has been withdrawn provided the Commissioners are of the view that this would have no materially deleterious effect on the integrity of the overseas operator's business or jeopardise the integrity and purpose of these Regulations and the Act.

13 Enforcement of Prohibition on use of Disaster Recovery Facilities

- (1) If any person has reason to believe at any time that any overseas licensed operator or accredited disaster recovery facilities provider is in breach of these Regulations it may complain to the Commissioners.
- (2) Such complaint must be in writing and set out the details of the relevant overseas licensed operator or accredited disaster recovery facilities provider, the relevant sites and specific breaches in relation to which the complaint is made.
- (3) Where the Commissioners are of the view that insufficient information has been provided they may seek further information from the complainant or make further investigations as they see fit.
- (4) The Commissioners may decline to investigate a complaint where they are of the view, in their absolute discretion, that the complaint is frivolous, vexatious or not made in good faith, or where the complainant has not kept the contents of its complaint confidential.
- (5) The Commissioners will as soon as reasonably practicable after obtaining all the information requested by them decide whether the overseas licensed operator or accredited disaster recovery facilities provider has been in breach of these Regulations and will notify the overseas licensed operator or accredited disaster recovery facilities provider and the complainant to that effect.
- (6) Nothing in these Regulations prevents the Commissioners investigating a matter on their own initiative.

- (7) The process for conducting the investigation, with the exception of that which is specifically set out in these Regulations, is for the Commissioners to determine in their absolute discretion.
- (8) Nothing in this Regulation 13 shall oblige the Commissioners to revoke or suspend the overseas licensed operator's use of the disaster recovery facilities under Regulation 9 or to revoke or suspend the accredited disaster recovery facilities provider's accreditation under Regulation 12 insofar as any complaint is upheld.

14 **Exclusions from Regulations**

- (1) Nothing in these Regulations should be construed to preclude an operator licensed under the Act from utilising disaster recovery facilities in the Isle of Man from non-accredited disaster facilities providers.
- (2) Nothing in these Regulations should be construed as preventing technical redundancy support from the Isle of Man on behalf of overseas licensed operators provided such technical redundancy support does not require the hosting of the module or algorithm of any source code responsible for generating the result of any games provided by the overseas licensed operator.

15 **Voluntary Termination of Use or Accreditation of Disaster Recovery Facilities**

- (1) Nothing in these Regulations will prevent:
- (a) an overseas licensed operator serving notice on the Commissioners and the accredited disaster recovery facilities provider stating that it will no longer be utilising the disaster recovery facilities provider, provided that it gives no less than 30 days notice in writing; or
 - (b) an accredited disaster recovery facilities provider serving notice on the Commissioners and the overseas licensed operator that it will no longer be providing disaster recovery facilities provided that it gives no less than 30 days notice in writing.
- (2) Insofar as such notice or notices are made under Regulation 15(1)(a) or 15(1)(b) no proportion of annual fee paid at the date of the expiry of such notice will be refundable to the overseas licensed operator or to the accredited disaster recovery facilities provider.

16 **Penalties**

- (1) If any overseas licensed operator is in breach of any of these Regulations the Commissioners may regard it as a ground for refusal of a licence under the Act.
- (2) If any accredited disaster recovery facilities provider is in breach of any of these Regulations, it will be guilty of an offence and liable on summary conviction to a fine not exceeding £5,000.

17 **Revocation**

The Online Gambling (Technical Support And Disaster Recovery) Regulations 2006⁵ (25/06) are revoked.

MADE

15th February

2006



Minister for Home Affairs

EXPLANATORY NOTE

(This note is not part of the Regulations.)

This Order which is made under the On-line Gambling Regulation Act 2001 provides for the rules and licences under which Disaster Recovery Facilities can be provided in the Isle of Man to off island online casinos.

⁵ (25/06)

