

STATES OF JERSEY



DRAFT GAMBLING COMMISSION (JERSEY) LAW 200- (P.139/2009): AMENDMENT

**Lodged au Greffe on 6th October 2009
by the Deputy of St. Martin**

STATES GREFFE

DRAFT GAMBLING COMMISSION (JERSEY) LAW 200- (P.139/2009):
AMENDMENT

1 PAGE 15, ARTICLE 3 –

After paragraph (4) add the following paragraph –

“(5) The Commission must ensure that it carries out its functions in a way that does not give rise to, or maintain, unnecessary burdens.”.

2 PAGE 15, ARTICLE 5 –

(a) after paragraph (1) insert the following paragraph –

“(2) The Minister may give to the Commission, in writing, specific directions as to the determination under Article 11(4)(c) of the manner in which gross win is to be calculated.”,

and renumber the remaining paragraphs accordingly;

(b) in paragraph (2) (renumbered as (3)), after “under paragraph (1)” insert “and any specific directions given under paragraph (2)”.

3 PAGE 17, ARTICLE 6 –

(a) for paragraph (12) substitute the following paragraph –

“(12) The Minister –

(a) must by Order require the Commission to consult in a specified manner before it approves a code; and

(b) may by Order –

(i) prescribe any aspect of the manner in which an approved code must be published, and

(ii) impose any other requirement on the Commission in relation to approval of codes.”;

(b) after paragraph (13) add the following paragraph –

“(14) The Commission must –

(a) in exercising its powers under this Article and performing its duty under Article 3(5) in relation to those powers, particularly take account of any burden that may be caused by any unnecessary inconsistency between a provision of an approved code and any similar provision in any other jurisdiction in which providers of gambling services also operate;

(b) keep under review its exercise of its powers under this Article, and in particular keep under review the provisions of any approved code or of any technical standards referred to in such a code; and

- (c) specify, in its report on its operations prepared under Article 18(1)(b), the results of action taken under sub-paragraphs (a) and (b).”.

4 PAGE 21, ARTICLE 11 –

- (a) in paragraph (1) after the word “may”, insert the words “, after complying with an Order under paragraph (14).”;
- (b) in paragraphs (4)(c), (4)(d)(i), (8)(a) and (b), (9)(a) and (b) and (10), for the word “turnover”, wherever it occurs, substitute the words “gross win”;
- (c) in paragraph (4)(d)(iii) for the words “2 per cent” substitute the words “1 per cent”;
- (d) after paragraph (13) add the following paragraph –
 - “(14) The Minister must, by Order, require the Commission, before it makes a determination under paragraph (1) –
 - (a) to consult in a specified manner those from whom the Commission proposes to raise the levy; and
 - (b) to give an opportunity, in a specified manner, for donations to be made to the social responsibility fund to such an extent as to render the proposed levy unnecessary.”.

5 PAGE 29, SCHEDULE 1 –

- (a) delete paragraph 2(3) and renumber the remaining sub-paragraphs accordingly;
- (b) in paragraph 4(2)(b)(i) for the words “6 consecutive months” substitute the words “2 consecutive months”;
- (c) delete paragraph 4(3)(f);
- (d) delete paragraph 5(3) and renumber the remaining sub-paragraphs, and alter internal cross-references, accordingly;
- (e) for paragraph 6(3)(c) substitute the following sub-paragraph –
 - “(c) if a vote is tied, it is to be taken to have been lost.”.

DEPUTY OF ST. MARTIN

REPORT

In March 2005, the States debated P.62/2004 which had been lodged by the Economic Development Committee in April 2004. The proposition's purpose was to seek States approval to draft legislation to allow for casino gambling, commercial bingo and on-line gambling. The first two were rejected.

EDC was also seeking in principle approval that a Gambling Commission should be established in the Island and that the purpose of the Commission should be licensing, regulation, harm reduction/social responsibility and ensuring that gambling issues do not harm the Island's international reputation, with the terms of reference of the Commission to be approved by the States.

It may well be that the proposed Gambling Commission which will require a grant from the taxpayer of £225,000 per annum, plus more than doubling the existing license fees is totally unnecessary. There is no casino, commercial bingo nor on-line gambling. There are only 29 betting offices in the Island and the Industry has an outstanding record of self-regulation. However if the States is minded to support the principle of a Gambling Commission Law, I believe that amendments are necessary.

Good Practice and Codes of Practice are essential and if there is to be a good working relationship between the Industry and the proposed Commission there must be consultation before major decisions are taken. It is also imperative that the Commission is accountable to the Minister who in turn is accountable to the States. Therefore it is imperative for that principle to be enshrined in Law.

Amendment 1 inserts the general duty to avoid unnecessary burdens in all the Commission's functions.

Amendment 2 allows the Minister to give specific directions about calculation of "gross win" – as a safer alternative to trying to define "gross win" on the face of the Law by using other terms that are even more difficult to define.

Amendment 3 makes consultation compulsory, and requires the Commission to take account of concerns about inconsistent codes (but without specifically referring to the U.K.). It also provides for keeping the codes and standards under review – which would ensure they are not left to become out of date or inconsistent because of changes elsewhere. Finally it reinforces those obligations by making the Commission include them specifically in its annual report to the States.

Amendment 4 substitutes "gross win" (undefined, but see *Amendment 2*) for "turnover", reduces the maximum % levy to 1, makes consultation compulsory (Minister specifying how by Order), and obliges the Minister to make an Order requiring the Commission to give a specified opportunity for donations before going for a levy.

Amendment 5 makes the various changes to Schedule 1.

During the 2005 debate concern had been expressed about social problems that could arise following the establishment of a casino. I believe many members voted in support of the Commission because it would be best placed to deal with the perceived concerns. However there is no casino and there is little evidence of any social problems arising from gambling abuse or addiction. Therefore in my opinion, there is little justification for a Social Responsibility Fund. However whilst there is little

evidence, I accept that it is the Industry's best interest that one is established to cater for any unforeseen problems. I understand that the Industry is also supportive, in principle, of a voluntary fund as this has been accepted as a matter of Best Practice in other jurisdictions. However the scale of any proposed levy must be proportionate to the size of the problem (as supported by valid evidence as opposed to conjecture) and the statutory levy as proposed is unreasonable.

The Jersey Gaming Industry is comparatively small with only 29 Betting Offices compared with the many hundred liquor licensed premises. The revenue received from the Gaming Industry is approximately £131,000 per annum. The greater part of the revenue comes from the licensed Betting Offices' fees and from their licensed gaming machines.

The Industry has a remarkable record of self regulation with little evidence of gambling addiction. The same can not be said of the liquor licensing industry which raises £275,000 in fees from the hundreds of licensed premises. Its licence fees are considerably much lower than of those in the Gaming Industry. For example licence fees for public houses, restaurants or night clubs are under £500 per annum. The licence fee for large supermarkets is only £114 per annum.

What is beyond dispute is there are considerably more social problems arising from alcohol abuse yet there is neither a Commission nor a Social Responsibility Fund. It seems perverse to insist on a statutory levy on the Gaming Industry with little social problems.

Part 4 deals with Social Responsibility. The current proposal details, in short, the creation of a statutory Social Responsibility fund which will be used solely for the Jersey responsible gambling function. The Fund will be raised by targeting certain license types, and operators will be charged up to 2% of Turnover. Based on current over the counter turnover and forecasted gaming machine turnover this would generate a fund far in excess of what could possibly be needed to finance the Social Responsibility Fund.

A fairer way of raising the required funds would be for the levy to be based on the gross win and not on turnover.

It should be borne in mind that the Minister is intending to, at least, double the licence fees for all Betting Offices irrespective of their size or turnover. This could lead to the demise of the small independent, locally owned, betting offices which are very much a part of the Industry's social fabric. One effect of this will be a likely increase in illegal gambling with all the associated problems that would go with such an increase. To ensure the survival of the small independent shops the levy could be raised from the gross win from the new Type 2 gaming machines which will become available if P.140/2009 is approved. The small independent shops are unlikely to install these machines in any great number as they do not have the business to justify installing the new machines.

From the outset, the Operators have agreed that operating the machines in a Social Responsible manner is a key element and have demonstrated how this is achieved in other jurisdictions. Indeed they already voluntarily operate within the Jersey market to the same high standards that are required within the U.K.

Given the very small number of problems within the Industry, it should not require a large Social Responsibility Fund. It was the understanding of the Operators that the

Social Responsibility Fund was looking to raise no more than £30,000 to fund the responsible gambling function.

The Operators would propose that in the first instance the Industry would be approached and given the opportunity to produce sufficient donations (as above) on a voluntary basis and that in the event this is not forthcoming that only then the industry be charged a levy that may not exceed 1% of Gross win.

Amendment 5 – all in Schedule 1

(a) and (d) Appointment/Cessation of office of Chairman

I have never supported *in camera* debates and am of the belief that at every States Sittings there should be a presumption of openness. The States are frequently asked approve appointments and the majority are debated in public. If the Minister is of the view that the appointment or cessation of office of the Chairman should be *in camera* then he should seek leave of the States.

(b) Cessation of office as Commissioner

I am surprised that a Commissioner who may be in receipt of public money may be absent from meetings for as long as 6 months without the Commission's permission. If the Commission is to be effective then it should be efficient and accountable. It is unacceptable for any member to absent themselves for so long. Therefore I propose that 6 months be reduced to 2 months.

(c) Age Limit

No reason is given as to why someone who reaches the age of 73 should no longer be appointed as a Commissioner. The States should not be ageist. Just because Jersey does not have a Discrimination Law it does not mean we should not adhere to good practice. To infer that someone at a particular age is too old to be a Commissioner is discriminatory and has no place in any Jersey Law. Therefore the sub-paragraph should be deleted.

(e) Procedure at meetings. (Tied Vote)

I believe it is no longer acceptable for Chairmen to have two votes. If a vote is tied it shall be taken as lost. That is the situation in the States and should be included in any laws that we approve.

Financial and manpower implications

There are no financial or manpower implications arising from this amendment.