

STATES OF JERSEY



DRAFT GAMBLING (REMOTE GAMBLING DISASTER RECOVERY) (AMENDMENT) (JERSEY) REGULATIONS 201-

**Lodged au Greffe on 31st December 2010
by the Minister for Economic Development**

STATES GREFFE



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REPORT

The purpose of these amendments is to make lawful by licence the continuous operation of e-gambling in Jersey.

Background

Although the modernisation of gambling legislation and regulation has attracted a broad level of support in the States, some Members requested the re-examination of the case for gambling reform and internet-based e-gaming in particular. As a consequence, in a statement to the Assembly on 1st December 2009, the Minister for Economic Development agreed to ask the States to re-affirm its commitment to reform and modernisation. On 21st April 2010 the States Assembly debated and conclusively approved* P.28/2010: the *Establishment of a regulatory and licensing regime for e-gaming for Jersey*. The accompanying report demonstrated that the Economic Development Department (EDD) had fully considered all relevant social, moral and economic consequences in making its recommendation to continue with the implementation of e-gaming licensing in Jersey as an integral part of the overall modernisation of gambling legislation and as a prime example of beneficial economic diversification.

As the States decided they were of opinion that the Minister for Economic Development should make provision for the regulation of e-gaming, the Department requested amendments to current e-gaming legislation, namely the Gambling (Remote Gambling Disaster Recovery) (Jersey) Regulations 2008. These Regulations already allow for the limited operation of e-gaming from Jersey as part of an overseas operator's business continuity provision, but restrict full operation to the circumstances of a verified disaster in the home jurisdiction.

Moreover, the Remote Gambling Disaster Recovery (DR) Regulations currently make reference under Regulation 1, Interpretation, to a "Jersey remote gambling licence" and this licence has been adapted to provide a mechanism to authorise persons to conduct remote gambling from Jersey. The terms of the Interpretation make clear that this licence may be activated under the DR Regulations or enabled by amendment to

* POUR: 40 CONTRE: 9

other allied Jersey gambling legislation. Amending the DR Regulation presented the most effective and sensible route to implement the decision of the Assembly. As these Regulations presently detail robust requirements for licensing limited operational e-gaming in Jersey, they have been further enhanced to reflect the framework of a new regulatory and licensing regime in line with the guiding principles of the Jersey Gambling Commission.

The Effect of the Regulations

Importantly, the definition of e-gaming has been revised to clearly relate to the provision of gambling services and rather than creating separate and specific licences for gaming and betting, activities ‘gambling’ is used to capture both activities. The definition makes it clear that we refer to those organising the gambling or providing gambling by way of business, and importantly regarding this status removes any doubt of providing normal internet access, hardware or software or other services to people who then independently use them to gamble remotely as a leisure pursuit. Licensing, therefore, is predicate on an electronic device physically based in Jersey which controls or conducts the gambling or the remote gambling site. In reaching this definition the Department was conscious not to capture current permitted terrestrial gambling activity such as credit betting, more widely understood to be a telephone account.

The amendment makes a clear distinction between two e-gaming licences: the limited operation which we have now in the form of a disaster recovery provision and the proposed fully operational licence. In order to reflect the permission of a full egaming regime in the Island, the Regulations should be renamed as the Gambling (Remote Gambling) (Jersey) Regulations 2008.

Currently, under the 2008 Regulations an e-gaming operator can be licensed if they meet the fit and proper criteria and require a business continuity provision in the Island. This approval provides the right to activate and operate e-gaming from Jersey in cases of a verified disaster in their home jurisdiction. Certain limitations are placed on this form of business continuity licence; the operator must be licensed and therefore regulated in another jurisdiction to make sense of placing a ‘back up’ provision elsewhere, but their invocation of gaming activity in Jersey is monitored by the Jersey Gambling Commission (JGC). The amendment charges the JGC to investigate each invocation and should a pattern appear suggestive of a mishandling of the disaster recovery permission, the authority may suspend or revoke the licence or recommend the operator revisits its business need in Jersey and apply for a general gaming licence. While this amendment does make some minor changes to the governance and requirements of this form of limited Disaster Recovery e-gaming, the Regulations retain the licence as a viable business continuity opportunity.

The second (new) e-gaming licence allows for the establishment of fully operational businesses in Jersey. The amendment does not apply the requirement of licensing by another jurisdiction, as in the case of business continuity licences, as a prime qualification of a licence application. However, this does not stop a business wishing to relocate to the Island, but to obtain a licence to operate from Jersey a firm must incorporate here and not be a subsidiary of the foreign operation. The amendment adopts the use of a “Jersey person” (in common with more recent legislation) with the meaning of a natural person, partnership or body corporate with dedicated and specified links with Jersey.

While not prohibiting home grown enterprise, applicants for an ongoing e-gaming licence must, at a minimum, prove competence, liquidity and be fit and proper persons to facilitate gambling to the public. While each licence will attract mandatory conditions, supplementary conditions will also apply and these are defined further on in this report. The mandatory conditions are drafted primarily with regard to consumer protection –

- Applicants must be able to prove the adequacy of all systems (including equipment and software) employed in relation to e-gaming; establishing this proof requires testing of all systems by an independent testing house accredited by the JGC.
- Adequacy includes proof that those systems ensure that the gambling is conducted fairly and securely and in accordance with the guiding principles and in compliance with any relevant code of practice, including –
 - separation of each customer’s funds;
 - winnings are paid out accurately and promptly;
 - accurate recording and retention of deposits and wagers;
 - data provided by customers is protected in line with the Data Protection (Jersey) Law 2005;
 - self exclusion or limitations on play requested by customers must be made available;
 - any funds held on behalf of a customer must not be used by the operator to pay any creditors of the operator or any holding company or subsidiary and must be refundable to the customer on request;
 - demonstrable measures must be taken to prevent money laundering, drug trafficking or terrorist financing.

The JGC will undertake due diligence on all applicants and the cost for doing so mirrors the charges already prescribed in the Regulation: namely an initial fee of £5,000 which may be increased by further tranches of £5000 depending on the extent and complexity of the applicant business. The amendment provides the JGC with the right to publish application forms rather than retaining them set within schedules as the regulator has always used the right to require further information to expand the scope of these prescribed forms. To meet the fit and proper test applicants for a licence must complete –

- Primary Application Form.
- Personal Declaration Form (principals, controllers, beneficiaries and other key personnel).
- Personal Waiver.
- Police Check.
- Corporate Waiver.

If the applicant is found to be fit and proper the Jersey Gambling Commission will award a licence and apply those standard licence conditions consistent with the

guiding principles set out under the Gambling Commission (Jersey) Law 2010, namely that any gambling services provided –

- should be conducted responsibly and with safeguards necessary to protect children and vulnerable people;
- should be regulated in accordance with generally accepted international standards to prevent fraud and money laundering, and should not be permitted to be a source of crime; and
- should be verifiably fair to consumers of those services.

It becomes a duty of the JGC to produce Codes of Practice, Guidance, and Standard Operating Procedures and ensure that all games are verified as fair by an independent testing laboratory approved by the Commission.

Further supplementary conditions may be added to a general operator's licence as well as disaster recovery licences; the amendment itemises examples of supplementary conditions but does not prescribe an exhaustive list. The conditions may concern –

- the equipment, including software, that may be used in connection with the remote gambling, that is equipment capable of affecting the outcome of remote gambling under the licence;
- whether that gambling will be conducted in accordance with the guiding principles and in compliance with any relevant code of practice;
- the requirements as to testing and notification before any changes may be made to that equipment;
- the use of each gambling site specified in the licence, and of each electronic device by means of which remote gambling may be conducted under the licence;
- whether any connection is permitted between a site or device mentioned and a gambling site, or electronic device, operated by another person for the purpose of conducting remote gambling;
- the checks to be carried out on the age and vulnerability of persons gambling remotely with the licence holder;
- the systems to be used to ensure that persons employed by the licence holder in particular capacities are suitable, including the checks to be carried out on the suitability of those persons;
- the maintenance of the adequacy of systems;
- compliance with any relevant provisions of any codes of practice;
- the charges or stakes payable for engaging in the remote gambling and the manner in which they are paid;
- the cash, prize, winnings or article, benefit or advantage other than cash to be won, and the manner in which it is delivered;
- the display of statements intended to ensure that users of the remote gambling are not misled as to available prizes, chances of winning or other aspects of its operation relevant to the fairness of the remote gambling, and the form, location, manner and occasions of the display;

- the making and retaining of records and accounts, the providing of verification of those records and accounts, and the sending of an annual statement to the Commission;
- the persons who may supply, install or maintain equipment, including software, that may be used in connection with the remote gambling;
- the training of staff in respect of the requirements of the guiding principles, good practice and these Regulations;
- the provision and maintenance of a current address.

The adoption of conditions linked to Codes of Practice is modelled on the equivalent regime in both the Gambling Commission (Jersey) Law 2010 and the recently amended Gaming and Lotteries Regulations. A breach of a Code is not a criminal offence but depending on the seriousness of the infraction, the JGC can apply regulatory sanctions such as adding or altering conditions on a particular licence. If a person breaches a condition which just requires compliance with a code, then they will not be prosecuted, but the JGC can suspend or revoke the licence (Regulations 32(2)(b) and 33(2)(d)) for that breach of condition. A breach of any condition or relevant code can also be taken into account by the JGC as a reason for exercising many of its more general discretionary powers. So the JGC might use the breach (where serious enough) as a reason to serve a compliance direction or to refuse a later application by that operator for a new licence (renewal or completely new) or for alteration of a condition. Regulation 31(4) just ensures that the only sanction that does not apply in these cases is criminal prosecution.

However, it is anticipated that the modernisation of the primary gambling law will make provisions for civil penalties or administrative fines for such breaches and these would be remitted to the Treasury. But the driving motive in respect of non-compliance is to arm the Commission with a route other than recommended or referred prosecution and seek compliance by a regulatory toolkit containing: suspension/revocation of licence, service of compliance notice, refusal of application for new licence or for alteration of condition, plus any other existing discretionary power to which the breach of Code could be relevant.

Cost and duration of licences

Licences will be valid for three years, but subject to an annual licence fee. However, the original Facilities (Hosting) Providers Licence is subject to the closing transitional provisions and will take two forms, primarily to protect the rights of current licence holders –

- **Hosting of E-gaming Operators** – hosting DR/business continuity only attracts the initial application fee and due diligence costs.
- **Hosting of Fully Operational E-gaming Operators** – valid for 3 years and £5,000 annual licence fee; new applicants will of course be subject to the same application and due diligence fees as those only wishing to host DR contingencies.

The 3 year life span also applies to e-gaming operators requiring either DR or full (general) operational licences; this duration was calculated to safely coincide with the introduction of further legislation in the broader modernisation package of the outdated 1960s Jersey gambling legislation.

E-gaming Operators solely requiring a DR licence will still be required to pay a fee of £5,000 per annum and should disaster strike the home jurisdiction and activation commences from Jersey, the fee will remain at the prescribed £250 per day. The fee for a full or general operators licence requires a different methodology which is based on net profit tariffs. However, all successful applicants will pay an initial licence fee of £35,000 regardless of the size of operation. The net profits of this first year of operation in Jersey will form the calculation of the following year or 'second year of effect' licence fee as well as the third year of trading –

- **Licence Fee** of £35,000, if there was no remote gambling yield in the relevant period, or if that yield was less than £1,000,000.
- **Licence Fee** of £70,000, if the remote gambling yield in the relevant period equalled or exceeded £1,000,000 but was less than £6,500,000.
- **Licence Fee** of £140,000, if the remote gambling yield in the relevant period equalled or exceeded £6,500,000.

These three bands based upon remote gaming yield or (net/gross) profit, were considered in relation to other comparable jurisdictions and the licence tariffs levied by regulators. While not wishing to embroil Jersey in an under-cutting exercise, the published figures are deemed broad enough to cater for both the smaller reputable firms and the larger Plc sector of the e-gaming industry.

As referred to above, the fee is determined by reviewing the previous years gaming yield under the licence (including any licence held in the year before a new or replacement licence is issued). Thus if the 3 year term expires and a new licence is requested, the licence fee will not drop back to the initial £35,000 if the yield during the previous year of operation exceeded £1,000,000. The mechanism for establishing the yield is based upon the amount brought in from customers by the gambling after deduction of the amounts paid out to them e.g. stakes less winnings. In cases of reluctance to provide accounts to JGC or a suspicion arises that a tactic has been used to artificially lower the yield, the regulator has the power to estimate the yield and to charge the appropriate fee. An onus is placed on the JGC to notify the licence holder of the amount of the fee at least 14 days before payment is due. The penalty for failing to pay an annual fee is automatic revocation of the licence and, given the retrospective nature of calculating yield, the JGC can still enforce payment of the fee as well. The regulation also equips the operator with the right to appeal the JGC's fee determination.

The original Disaster Recovery Regulation contained a robust set of due diligence criteria involving various tests, proofs and disclosures necessary to satisfy the grant of a licence, the amendment bolsters the current regime. The amendment not only requires financial checks on the prospective licence holder or the foreign corporation behind a disaster recovery application, it further adds a duty to take account of whether there are any other persons who should be subject to financial or fitness checks. The Department considers this widening of the due diligence net proportionate because of the possible influence on the licence holder not just from directors, the holding or subsidiary companies in the corporate family tree, but from others including employees, business partners or relatives.

Therefore having enhanced due diligence, the question arises whether it is proportionate to undertake the same level of intrusive due diligence on a operator wishing to apply for a new licence because the one they hold is reaching the end of its 3 year life span. The JGC is armed to consider launching a fresh due diligence

investigation on a case by case basis and not demand a full reapplication as an automatic pre-grant requirement. The Gambling Commission (Jersey) Law binds the regulator to guard against ‘unnecessary burdens’ and the Department questioned the validity of launching a full investigation into a known firm and charging the pertinent fees when the actual operator has reported any changes in corporate structure over the life of the licence or no significant changes had taken place in structure or ownership since the initial application. In applying an arbitrary approach to what in effect is re-licensing a Jersey firm, especially if noted for compliance with codes and conditions, would work against business, equally add burden to the regulator and the industry, while diminishing the potential attractiveness of Jersey for this industry sector.

Conclusion

The set of amendments creates a licence regime both considerate of social responsibility, fairness, and consumer protection while ensuring operators are fit and proper persons to hold a Jersey e-gaming licence. As outlined in the report accompanying P.28/2010, the potential economic benefit to the Island’s business and broadband infrastructure should not be overlooked in relation to an established e-gaming industry. E-gaming represents the most viable opportunity to develop the Island’s e-commerce industry and deliver the *genuine economic diversification* demanded by the States Strategic Plan.

The Jersey Gambling Commission with its primary emphasis on effective regulation and social responsibility will ensure that the e-gaming industry in Jersey will develop in a controlled manner. It is clear from the success of other jurisdictions that there is significant additional economic benefit to be afforded by the development of e-gaming through investment and upgrading of the Island’s communications infrastructure. Moreover, encouraging the industry to move to Jersey will –

- diversify the economy and reduce concentration risk in the employment and tax base;
- increase States licensing and tax revenues;
- encourage the development of other businesses that support e-gaming or can benefit from greatly increased broadband connectivity;
- offer new and diverse employment opportunities.

Encouraged by the support given by the Assembly to the in principle Proposition P.28/2010, the Minister for Economic Development recommends the adoption of the following amendments which reflect modern, international best practice in the licensing of e-gaming by regulation.

Financial and manpower implications

There will be no additional costs to the States; the staff of the Jersey Gambling Commission will undertake the function of due diligence and regulation of this new and enhanced licensing regime.

Explanatory Note

These Regulations amend the Gambling (Remote Gambling Disaster Recovery) (Jersey) Regulations 2008 to allow remote gambling that is not limited to disaster recovery functions. Those Regulations are accordingly re-named as the Gambling (Remote Gambling) (Jersey) Regulations 2008.

Regulation 1 defines the Gambling (Remote Gambling Disaster Recovery) (Jersey) Regulations 2008 as the “principal Regulations”, and refers to their re-naming by *Regulation 37* as the Gambling (Remote Gambling) (Jersey) Regulations 2008.

Regulation 2 replaces references to the Minister for Economic Development with references to the Jersey Gambling Commission, to which the Minister’s functions were generally transferred by the Gambling Commission (Jersey) Law 2010. The Minister retains the power to make Orders (see below on *Regulation 2(8)* inserted in the principal Regulations).

Regulation 3 amends the definitions in the principal Regulations. In particular it distinguishes 2 types of remote gambling operator’s licence, namely a disaster recovery operator’s licence for those who wish only to conduct remote gambling in the circumstances catered for by the current principal Regulations, and a new general remote operator’s licence for those who wish to conduct remote gambling on an ongoing basis. It also defines “Jersey person” as a natural person, partnership or body corporate with specified links with Jersey. It makes various minor and consequential changes to other definitions, and signposts new definitions in the substituted *Regulation 2*. It deletes paragraph (2) (power to designate remote sites) because the replacement for that power is relocated to *Regulation 2(8)* (see notes on *Regulation 4* below).

Regulation 4 substitutes *Regulation 2* of the principal Regulations to expand on the definitions of remote gambling and related concepts. It defines remote gambling as gambling (of any kind) by means of electronic communication through a website or other designated remote site.

Paragraph (4) of the substituted *Regulation* replaces the definition of “conducting” remote gambling with one related to the definition of “providing gambling services” in Article 1(2)-(4) of the Gambling Commission (Jersey) Law 2010, and to the offence of illegal gambling created by Article 2(2) of the Gambling (Jersey) Law 1964. Remote gambling is “conducted” if a business provides a non-business customer with a service consisting of remotely gambling with the customer or facilitating remote gambling by the customer. Paragraph (5) ensures that involvement in remote gambling will not need a licence if it is too tenuous to constitute the offence under the Gambling (Jersey) Law 1964. So no licence is needed by, for example, those who provide general internet access, hardware or software or other services to operators or their customers, who then independently use those services to gamble remotely.

Paragraph (7) of the substituted *Regulation* expands on when remote gambling is treated as being conducted “from” a particular location. The Regulations bite if there is, on premises in Jersey, at least one electronic device operated by or for an operator to control the gambling or the remote site (as under the existing Regulations). The new paragraph (7)(b) means the Regulations also bite if an operator provides a service from premises in Jersey or has its registered office here (see also the amendment to

Regulation 4). Paragraph (8) defines a “controlling device” (expanding on the concept of an electronic device in the current Regulations) as one that controls the outcome of the gambling or the operation of the remote site. It also allows for cases where the device is operated by someone else on behalf of the person conducting the gambling. Paragraph (9) makes clear that these definitions also cater for cases where there is more than one operator, remote site or controlling device, and where they are in different premises or countries.

Under paragraph (10) of the substituted Regulation the Minister retains the power to make Orders amending the definition of a remote site (currently called a gambling site). Paragraph (11) clarifies the relationship with other Regulations made under the Law to cover terrestrial forms of gambling. The effect is that a licence (or any other authority or exemption) under the terrestrial Regulations cannot permit use of websites or other designated remote sites, but could allow use of other forms of electronic communication (such as betting with a licensed betting office in Jersey by telephone or email), either by covering it already or by being amended.

Regulation 5 amends Regulation 3 of the principal Regulations to refer to customers, remote sites and services in line with the new definitions.

Regulation 6 amends Regulation 4 of the principal Regulations so that gambling is only made lawful by an operator’s licence in cases where someone is conducting the remote gambling from Jersey. If more than one person is treated as conducting it from Jersey, they must all be licensed. If it is conducted partly from Jersey and partly from elsewhere, the Jersey operators must be licensed and their licence conditions will be cover their use of overseas devices and of connections with overseas operators (see the new Regulation 11A(8)(d)-(e) below). The amendment also separately ensures that gambling can be conducted under a general remote operator’s licence on an ongoing basis, without an activating disaster (whereas a disaster recovery operator’s licence is still only activated by a disaster).

Regulation 7 amends Regulation 5 of the principal Regulations to separate out provisions for the 2 types of operator’s licence. Only a Jersey person can apply for a general operator’s licence. An application for a disaster recovery operator’s licence can only be made by a body incorporated outside Jersey, and that body must nominate a Jersey subsidiary company as the licence holder (as under the current principal Regulations). The foreign body may apply before it has incorporated its Jersey subsidiary, and be given a provisional determination, which is then reviewed once the subsidiary has been incorporated.

Regulation 8 amends Regulation 6 of the principal Regulations so that, where a licence is being renewed on expiring after 3 years, a reduced fee can be charged if checks do not need to be repeated, bearing in mind the ability to rely on previously obtained information, and no further investigation fee can be charged unless there has been a significant change. (See also similar amendments to Regulation 19 of the principal Regulations).

Regulation 9 replaces Regulation 7 of the principal Regulations to separate out provisions for the 2 types of operator’s licence. It also limits both types to 3 years before they expire a fresh replacement licence must be obtained.

Regulation 10 amends Regulation 8 of the principal Regulations. It continues the requirement that a foreign corporation applying for a disaster recovery operator’s licence should have current authorization from its home jurisdiction. It does not apply

that requirement to an applicant for a general remote operator's licence, as that applicant must be a Jersey person.

For a disaster recovery operator's licence, the Commission must be satisfied that the proposed operation should not instead be covered by a general remote operator's licence. The licence grant fee is removed. The Commission has a new duty to publish, and take into account, a statement of its policy on the granting of licences, including as to testing and on any forms of gambling for which licences will not be granted.

There is a new requirement for satisfactory independent testing of certain equipment (including software). The provisions on checking of systems are strengthened, and customers can be limited in their gambling as well as completely excluded from it. The financial and fitness checks are focussed on the prospective licence holder and the foreign corporation behind a disaster recovery application. But a duty is added to take account of whether there are any other persons who should be subject to financial or fitness checks if they can influence the licence holder (not just directors or holding or subsidiary companies, but now including any others, such as employees, shareholders, business partners or relatives, if they have that influence).

The general reference to fairness and security is replaced with a more specific reference to the Commission's guiding principles (responsible conduct, safeguards for children and vulnerable people, prevention of fraud, money laundering and other crime, and verifiable fairness to consumers) and codes of practice. Where a licence is being renewed, the Commission must review the information it already holds from the current licence (supplied with the application for grant of the licence, or obtained during the licence under the Commission's powers, such as under Regulations 13 and 15) to see what it can rely on as current, rather than making repeat checks.

Regulation 11 amends Regulation 9 of the principal Regulations. It tightens the reference to the remote sites that must be specified on the licence, reflects the need to specify premises where the operator is based as well as those containing controlling devices (for which the name of the facility provider must be specified), and requires the conditions applicable to an operator's licence to be specified on the licence. The new paragraph (2A) makes clear that both operator's and facility provider's licences are needed even in cases where the same business operates the gambling and provides its own premises for a controlling device (see also the new Regulation 22(3)(b)(iii)).

Regulation 12 substitutes Regulation 10 of the principal Regulations to adapt the annual fees to the 2 types of operator's licence. It retains the £5,000 annual fee for a disaster recovery operator's licence. For a general remote operator's licence, the fee starts at £35,000, but increases to £70,000 if the operator's yield from remote gambling reaches £1,000,000, and to £140,000 for a yield of £6,500,000 or more. The fee is charged by reference to the previous year's yield under the licence (or under any general remote operator's licence held in the year before a new or replacement licence is issued). The Regulation sets the procedure for establishing the yield, which is the amount brought in from customers by the gambling after deduction of the amounts paid out to them. It allows the Commission to estimate yield if the operator does not provide details, and to charge the highest fee (or a lower fee if appropriate) if an avoidance tactic has been used to reduce the amount. The Commission must notify the licence holder of the amount of the fee at least 14 days before it is due (or only the lowest fee is payable). If an annual fee is not paid the licence is automatically revoked, but the Commission can still enforce payment of the fee as well. An appeal against decisions on yield is provided by *Regulation 35(a)*, inserting Regulation 43(1A) in the principal Regulations.

Regulation 13 substitutes Regulation 11 of the principal Regulations, and inserts a new Regulation 11A, to amend the provisions on conditions on operators' licences and to separate out provisions for the 2 types of licence. A holder of a disaster recovery operator's licence must be a subsidiary of a foreign corporation which must have authorization in its home territory, the conditions of which are applied to the disaster recovery operator's licence (to the extent that they are compatible with Jersey law and unless they are substituted by the Commission). A holder of a general remote operator's licence is no longer required to hold any other licence under other Jersey legislation on gambling (though it must also have a facility provider's licence if it operates from its own premises), and does not need any foreign corporation behind it, so the relevant conditions are those imposed by and under the principal Regulations as amended.

The new Regulation 11A provides for supplementary conditions (in addition to those applied by Regulations 12 to 15 of the principal Regulations). They can refer to, and require compliance with, codes of practice. The Commission must publish standard conditions, which are to be imposed unless there is a particular reason otherwise, but may also impose non-standard conditions. Supplementary conditions must cover the issues set out in Regulation 11A(8) as to: systems for informing customers about help with problem gambling, about chances and about regulation by the Commission, and systems for checks on customers; record keeping, including monitoring for excessive use of disaster recovery and timely provision of details of annual yield for calculation of fees; use of remote sites (currently dealt with under Regulation 17(2)) and controlling devices, including connections with other providers of remote gambling; equipment, including software and its testing; systems for employee checks; and maintenance of systems. They may also cover any other issues including, but not limited to, those set out in Regulation 11A(9) such as stakes, prizes, information for customers, approved equipment suppliers, staff training and provision of an address for service of documents.

Regulation 14 substitutes Regulation 12 of the principal Regulations to cater for cases where the operator has a registered office in, or provides services from premises on which there is no controlling device. All the relevant premises will have to be specified on the operator's licence. The substituted Regulation imposes a condition that other premises are not used, and that controlling devices can only be used on any of the specified premises covered by a current facility provider's licence. The condition does not prevent the remote gambling being conducted additionally from premises or through devices outside Jersey.

Regulation 15 repeals Regulations 16 and 17 of the principal Regulations. Regulation 16 currently imposes statutory conditions restricting the hosting of source codes. If necessary, codes of practice may deal with source codes, and supplementary conditions may be imposed to regulate their storage. Regulation 17 currently requires a remote site to specify that disaster recovery operations would be conducted from Jersey, and requires all gambling under a licence to be from the specified remote sites. These issues are instead to be dealt with by mandatory supplementary conditions under the new Regulation 11A(8)(a)(iii) to (iv) and (d) to (e) (see above), so that customers are aware of when the gambling is regulated by the Jersey Commission (including during operation under a disaster recovery licence) and detailed provision can be made for the connections between sites and devices that can be used under a licence.

Regulations 16 to 20 make consequential and other amendments to the provisions in Part 3 of the principal Regulations on facility providers' licences.

Regulation 16 amends Regulation 18 of the principal Regulations to make the same types of "Jersey persons" eligible for a facility provider's licence as for a general remote operator's licence, and to require the Commission to publish the form for applications. It also removes the requirement for premises to be available for 7 years (licences will only be for 3 years – see new Regulation 20(3)).

Regulation 17 amends Regulation 19 of the principal Regulations to provide for a reduced application fee for a facility provider's licence (and to limit further investigation fees) if checks do not need to be repeated (similar changes are made to Regulation 6 in relation to fees for general operator's licences).

Regulation 18 amends Regulation 20 of the principal Regulations to require the applicant for a facility provider's licence to be a Jersey person, and to remove the licence grant fee. It also makes facility provider's licences expire after 3 years.

Regulation 19 inserts a new Regulation 21A into the principal Regulations to ensure that an annual fee of £5,000 is payable for a facility provider's licence (and to make similar provision to that for fees for operators' licences).

Regulation 20 substitutes Regulation 22(3) of the principal Regulations with 2 new paragraphs. The replacement paragraph (3) gives the purpose of conditions and sets out a non-exhaustive list of possible conditions. It caters for cases whether an operator can (or must) use its own premises (which requires it to hold both an operator's licence and a facility provider's licence), and for whether other operators may also be hosted at the premises. The new Regulation 22(4) requires the Commission to publish standard conditions along with its policy on when they will be imposed. Although all forms of gambling (such as betting, gaming and lotteries) may have remote equivalents, the Commission's published policies under this paragraph and Regulation 8(1C) will set out which forms of remote gambling may be licensed.

Regulation 21 repeals Regulation 27 of the principal Regulations (which imposed statutory conditions restricting the hosting of source codes – supplementary conditions may be imposed instead if necessary).

Regulation 22 amends Regulation 28 of the principal Regulations to replace references to the conditions that may and may not be altered.

Regulation 23 amends Regulation 30 of the principal Regulations to reflect the repeal of Regulations 16 and 17 (and the Commission's assumption of functions of the Minister).

Regulation 24 amends Regulation 31 of the principal Regulations so that, where a condition requires compliance with a code of practice, contravention of the code is not itself a criminal offence (but can lead to non-criminal sanctions such as suspension or revocation of the licence).

Regulation 25 amends Regulation 32 of the principal Regulations to add a ground for suspension of a disaster recovery operator's licence for a period, where the Commission believes that the holder ought not to operate during the period unless it obtains a general remote operator's licence. This applies where the licence holder has conducted remote gambling (because of an activating disaster) in more than one period, and the length, frequency, pattern or other features of those periods indicate

that any further use should be under a full general remote operator's licence instead of disaster recovery.

Regulation 26 amends Regulation 34 of the principal Regulations to limit the notification duty to disaster recovery cases. It also removes the limit on operation under disaster recovery, which is currently at one period per year (instead the Commission may suspend a disaster recovery operator's licence if it is being over-used – see amendments to Regulation 32 above).

Regulation 27 amends Regulation 35 of the principal Regulations to limit the notification duty to disaster recovery cases.

Regulation 28 amends Regulation 36 of the principal Regulations to limit the daily operation fee to disaster recovery cases.

Regulation 29 amends Regulation 37 of the principal Regulations to apply the extension provisions only to disaster recovery cases. It also requires the Commission to take account, on extension requests, of its policy on when an operator has made so much use of disaster recovery that it should instead apply for a full general licence (the fixed limit of 9 months is accordingly removed).

Regulation 30 amends Regulation 38 of the principal Regulations so that the suspension or revocation of a foreign authorization only affects a disaster recovery operator's licence (no foreign corporation is required for a general remote operator's licence).

Regulations 31 and *32* amend Regulations 39 and 40 of the principal Regulations respectively to limit the notification duties to disaster recovery cases.

Regulation 33 amends the heading of Regulation 41 of the principal Regulations to reflect the extension of the Commission's supervision to remote gambling in general.

Regulation 34 amends Regulation 42 of the principal Regulations to limit further the basis on which a compliance direction may be issued (and to make consistent reference to gambling conducted "from" Jersey).

Regulation 35 amends Regulation 43 of the principal Regulations to add a right of appeal against decisions as to remote gambling yield (under Regulation 10 as amended), and to update references to conditions that may be appealed against.

Regulation 36 inserts a new Regulation 46A in the principal Regulations to clarify that fees are payable to the Commission as agent for the States.

Regulation 37 amends Regulation 47 of the principal Regulations to re-name those Regulations as the "Gambling (Remote Gambling) (Jersey) Regulations 2008", to reflect the extension beyond disaster recovery.

Regulation 38 repeals the Schedules to the principal Regulations. The Schedules currently specify forms which are in future to be published by the Commission instead.

Regulation 39 applies transitional provisions in relation to a remote gambling facility provider's licence granted under the principal Regulations before the commencement of these Regulations. The effect is that the licence remains in force and the amended Regulations are adapted to ensure the effect of the licence remains the same. In particular the holder is still only permitted to host holders of disaster recovery

operators' licences (but is not subject to the new duty to pay annual fees or the 3 year expiry provisions). If the holder of the licence wishes to be able to host holders of full general remote operators' licences (or to vary a condition in a way that is only possible under the amended Regulations), then it can apply to the Commission to allow that. But it can only do so on the basis that the provisions as to annual fees and expiry will then apply to the licence from the date of the change.

Regulation 40 gives the citation for these Regulations and brings them into force 14 days after they are made.



Jersey

DRAFT GAMBLING (REMOTE GAMBLING DISASTER RECOVERY) (AMENDMENT) (JERSEY) REGULATIONS 201-

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Jersey

DRAFT GAMBLING (REMOTE GAMBLING DISASTER RECOVERY) (AMENDMENT) (JERSEY) REGULATIONS 201-

Made [date to be inserted]

Coming into force [date to be inserted]

THE STATES, in pursuance of Articles 3, 9 and 10 of the Gambling (Jersey) Law 1964¹, have made the following Regulations –

1 Interpretation

In these Regulations, “principal Regulations” means the Gambling (Remote Gambling Disaster Recovery) (Jersey) Regulations 2008², which are re-named by Regulation 37 as the Gambling (Remote Gambling) (Jersey) Regulations 2008.

2 General amendment of references to Minister

For the word “Minister”, wherever occurring in the principal Regulations, there is substituted the word “Commission”.

3 Amendment of Regulation 1

In Regulation 1 of the principal Regulations –

- (a) in paragraph (1) (which becomes the only paragraph in that Regulation by virtue of paragraph (b), and from which accordingly the number “(1)” is removed) –
 - (i) after the definition “activating disaster” there are inserted the following definitions –
 - “ ‘code of practice’ means a code of practice approved under Article 6 of the Gambling Commission (Jersey) Law 2010³;
 - ‘Commission’ means the Jersey Gambling Commission established by the Gambling Commission (Jersey) Law 2010;”,
 - (ii) after the definition “compliance direction” there are inserted the following definitions –

- “ ‘conduct’ , in relation to remote gambling, and to premises or to a country or territory, has the meaning given by Regulation 2;
- ‘controlling device’ has the meaning given by Regulation 2;
- ‘customer’ has the meaning given by Regulation 2;
- ‘disaster recovery operator’s licence’ means a licence granted under Regulation 7(1)(b);”;
- (iii) the definition “electronic device” is deleted,
- (iv) in the definition “foreign gambling corporation” for the words “a remote gambling operator’s licence has been granted in accordance with Regulation 7(4)” there are substituted the words “a disaster recovery operator’s licence has been granted”,
- (v) for the definition “gambling site” there are substituted the following definitions –
- “ ‘general remote operator’s licence’ means a licence granted under Regulation 7(1)(a);
- ‘good practice’ means practice that appears to the Commission to be desirable having regard to the guiding principles;
- ‘guiding principles’ means the principles set out in Article 4 of the Gambling Commission (Jersey) Law 2010;”;
- (vi) in the definition “holding company” for the words “a licence has been granted in accordance with Regulation 7(4)” there are substituted the words “a disaster recovery operator’s licence has been granted”,
- (vii) in the definition “home country or territory” –
- (A) in sub-paragraph (a) for the words “a person to whom a Jersey remote gambling licence has been granted” there are substituted the words “a Jersey person”,
- (B) in sub-paragraph (b) for the words “a remote gambling operator’s licence has been granted in accordance with Regulation 7(4)” there are substituted the words “a disaster recovery operator’s licence has been granted”,
- (viii) after the definition “home country or territory” there is inserted the following definition –
- “ ‘Jersey person’ means a person who is –
- (a) a natural person who is ordinarily resident in Jersey;
- (b) a body incorporated in Jersey;
- (c) a partnership formed in Jersey under customary law, in which at least one of the partners falls within sub-paragraph (a) or (b); or
- (d) a partnership registered under an enactment of Jersey;”;
- (ix) the definitions “internet site”, “Jersey remote gambling licence”, “Jersey resident” and “licence” are deleted,
- (x) after the definition “money laundering” there is inserted the following definition –

- “ ‘published’ means published in a manner likely to bring it to the attention of those affected;”,
- (xi) for the definition “remote gambling” there is substituted the following definition –
- “ ‘remote gambling’ has the meaning given by Regulation 2;”,
- (xii) for the definition “remote gambling operator’s licence” there are substituted the following definitions –
- “ ‘remote gambling operator’s licence’ means a general remote operator’s licence or a disaster recovery operator’s licence;
- ‘remote site has the meaning given by Regulation 2;”;
- (b) paragraph (2) is deleted.

4 Substitution of Regulation 2

For Regulation 5 of the principal Regulations there is substituted the following Regulation –

“2 Meaning of ‘remote gambling’ and related expressions

- (1) Paragraphs (2) to (7) apply for the purpose of construing references in these Regulations to remote gambling and to related expressions used in those paragraphs.
- (2) Gambling is remote if it is effected by means of electronic communication through a remote site.
- (3) A remote site is –
- (a) a website; or
- (b) any other remote site designated under paragraph (10)(b).
- (4) A person (referred to in this paragraph as an ‘operator’) conducts remote gambling (or remote gambling operations) if –
- (a) another person gambles remotely otherwise than in the course of a business; and
- (b) the operator, in the course of a business, provides to that other person a service consisting wholly or mainly of either or both of –
- (i) gambling remotely with that other person, and
- (ii) facilitating that other person’s remote gambling.
- (5) For the purpose of paragraph (4)(b)(ii), a person facilitates gambling if –
- (a) the person organizes or in any way takes part in that gambling; and
- (b) by doing so the person –
- (i) commits an offence under Article 2(2) of the Law, or

- (ii) would commit that offence but for the gambling being made lawful by these Regulations, or being outside the territorial scope of the offence.
- (6) A person is a customer of another person if –
 - (a) the person gambles remotely otherwise than in the course of a business; and
 - (b) the other person conducts the remote gambling by providing a service to the person.
- (7) A person who conducts remote gambling does so from premises, or from a country or territory if –
 - (a) there is on those premises, or in that country or territory, a controlling device operated by or on behalf of the person in respect of the remote gambling; or
 - (b) the person –
 - (i) provides from those premises, or from that country or territory, any service by virtue of which the person conducts the remote gambling, or
 - (ii) is a corporate body that has a registered office at those premises, or is incorporated under the law of that country or territory.
- (8) A controlling device is a computer server, or other electronic device, that –
 - (a) is operated –
 - (i) by a person conducting remote gambling, or
 - (ii) on behalf of such a person, by a person other than a customer of that person; and
 - (b) controls, wholly or partly –
 - (i) the outcome of the remote gambling, or
 - (ii) the operation of a remote site, through which the remote gambling is conducted.
- (9) For the purposes of paragraphs (4) to (8) it is irrelevant whether the remote gambling is also conducted by any other person, from any other premises, country or territory, or through any other remote site or controlling device.
- (10) The Minister for Economic Development may, by Order –
 - (a) amend paragraph (3)(a);
 - (b) designate any interactive site (whether virtual or otherwise), television channel or other means of communication as a remote site for the purpose of paragraph (3)(b).
- (11) In relation to any form of gambling made lawful by any terrestrial Regulations, being Regulations under the Law other than these Regulations –
 - (a) nothing in the terrestrial Regulations is to be construed as permitting the use of a remote site for gambling under those Regulations; and

- (b) nothing in these Regulations is to be construed as limiting any right that may be granted under the terrestrial Regulations to use any electronic communication, otherwise than through a remote site, for gambling under those Regulations.”.

5 Amendment of Regulation 3

For Regulation 3(1)(b) of the principal Regulations there is substituted the following sub-paragraph –

- “(b) an event that renders inaccessible to customers a remote site through which those customers gamble remotely, in such a way that customers are unable to access a service provided by the holder of the licence in conducting remote gambling; and”.

6 Amendment of Regulation 4

In Regulation 4(1) of the principal Regulations –

- (a) for the words “if it is conducted by a person” there are substituted the words “if at least one person conducts it from Jersey and each person who conducts it from Jersey does so”;
- (b) in sub-paragraph (b), before the words “at any time” there are inserted the words “if that licence is a disaster recovery operator’s licence,”.

7 Amendment of Regulation 5

In Regulation 5 of the principal Regulations –

- (a) for paragraph (1) there are substituted the following paragraphs –
 - “(1) An application may be made to the Commission –
 - (a) by a Jersey person, for a general remote operator’s licence; or
 - (b) by a body incorporated outside Jersey, for a disaster recovery operator’s licence.
 - (1A) A body applying for a disaster recovery operator’s licence shall nominate, as the proposed holder of the licence, a company that –
 - (a) has been incorporated under the Companies (Jersey) Law 1991⁴ for the purpose of conducting remote gambling under the licence; and
 - (b) is a subsidiary company that is wholly owned by the body making the application.
 - (1B) A body may apply for a disaster recovery operator’s licence before the incorporation of a subsidiary to be nominated under paragraph (1A), if the application includes proposals for the subsidiary, in which case the Commission may issue a provisional determination that –

- (a) is based on the applicant's proposals for the subsidiary; and
 - (b) is to be reviewed after the applicant has complied with paragraph (1A), before the Commission determines the application under Regulation 7.”;
- (b) in paragraph (2) for the words “set out in Schedule 1” there are substituted the words “published by the Commission for the type of operator's licence for which the application is made”;
- (c) in paragraph (3)(a) for the words “there is a Jersey remote gambling licence in relation to the person and that the licence has not been suspended” there are substituted the words “the person is a Jersey person, if the application is for a general remote operator's licence”;
- (d) at the end of paragraph (3)(b) there are added the words “, if the application is for a disaster recovery operator's licence”;
- (e) in paragraph (4) for the words “If an application under paragraph (1) is accompanied by proof of the kind referred to in paragraph (3)(b), the application” there are substituted the words “An application by a person for a disaster recovery operator's licence”.

8 Amendment of Regulation 6

At the end of Regulation 6 of the principal Regulations there is added the following paragraph –

- “(5) If the application is for a licence to take effect on the expiry under Regulation 7(2)(b) of another licence, the Commission –
- (a) shall take account of its duty and power under Regulation 8(3);
 - (b) shall reduce the first stage fee if it considers that the full amount is not needed to cover the costs referred to in paragraph (3), whether because any investigation does not need to be repeated or for any other reason; and
 - (c) shall not issue a notice under paragraph (2) unless it considers that that there has been a significant change, since the grant of the expiring licence, requiring further investigation.”.

9 Substitution of Regulation 7

For Regulation 7 of the principal Regulations there is substituted the following Regulation –

“7 Grant or refusal of remote gambling operator's licence

- (1) The Commission may, after considering an application under Regulation 5 from a person –
- (a) grant a general remote operator's licence to the person;
 - (b) grant a disaster recovery operator's licence to the company nominated by the person under Regulation 5(1A); or

(c) by notice in writing to the person, setting out reasons, refuse to grant a remote gambling operator's licence.

(2) A licence granted under this Regulation –

(a) shall take effect from a date, no earlier than the date of its grant, specified in the licence; and

(b) shall expire 3 years after that date.”.

10 Amendment of Regulation 8

In Regulation 8 of the principal Regulations –

(a) in paragraph (1)(b) for the words “players who may participate in remote gambling with the person” there are substituted the words “customers of the person”;

(b) in paragraph (1)(c) the words “the Minister is satisfied that” are deleted;

(c) for paragraph (1)(e) there are substituted the following sub-paragraphs –

“(e) either the person is a Jersey person or there is a foreign authorization in respect of the foreign gambling corporation in relation to the person, being an authorization that has not been suspended;

(ea) where the application is for a disaster recovery operator's licence, the remote gambling proposed to be conducted from Jersey under the licence shall be limited to periods that do not (by their length, frequency, pattern or otherwise) indicate that the proposed holder can reasonably be expected, having regard to the policy published under paragraph (1C), to apply instead for a general remote operator's licence;”;

(d) paragraph (1)(g) is deleted;

(e) after paragraph (1) there are inserted the following paragraphs –

“(1A) The Commission shall not grant a remote gambling operator's licence unless it is satisfied that an independent person approved by the Commission has tested each item of equipment, including software, that may affect –

(a) the outcome of remote gambling under the licence; or

(b) whether the person will conduct the gambling in accordance with the guiding principles and in compliance with any relevant code of practice.

(1B) Paragraph (1A) does not apply to any item in respect of which the Commission is satisfied that such testing is not necessary, whether in general or in the circumstances of the application.

(1C) The Commission shall publish a statement of the Commission's policy as to the circumstances (including as to testing) in which, and any forms of gambling for which, it generally will, or will not, grant –

(a) a disaster recovery operator's licence; or

(b) a general remote operator's licence.”;

- (f) for paragraph (2)(a) there is substituted the following sub-paragraph –
- “(a) the financial standing, including the financial stability and the adequacy of the capital base, of the person and of any foreign gambling corporation in relation to the person;”;
- (g) in paragraph (2)(b) for the words “and any holding company, or subsidiary company, in respect of the person” there are substituted the words “and any foreign gambling corporation in relation to the person”;
- (h) in paragraph (2)(c) –
- (i) for the words “the systems of the person” there are substituted the words “the person’s systems (including equipment and software), and of any testing carried out on those systems,”;
 - (ii) for the words “the gambling is conducted fairly and securely by the person” there are substituted the words “the person conducts the gambling in accordance with the guiding principles and in compliance with any relevant code of practice”;
 - (iii) in clauses (i), (ii), (iv) and (vi) for the words “player” and its derivatives, at each point where they occur, there are substituted the words “customer” and its derivatives,
 - (iv) in clause (iv) for the word “company” there is substituted the word “person”;
 - (v) in clause (v) for the words “be excluded from remote gambling on the gambling site” there are substituted the words “be excluded from or limited as to gambling remotely as customers of the person”;
 - (vi) in clause (vii) the word “whether” is deleted;
- (i) in paragraph (2)(d) for the words “the person, or any holding company, or subsidiary company, in respect of the person,” there are substituted the words “the person, or any foreign gambling corporation in relation to the person,”;
- (j) after paragraph (2)(d) there is inserted the following sub-paragraph –
- “(da) whether there is any other person in relation to whom the Commission should enquire into any of the matters referred to in sub-paragraphs (a), (b) or (d) because that person appears likely to be able to influence, whether as an employee, director, officer, member, partner, holding company, subsidiary company, relative or otherwise –
 - (i) the behaviour of the holder of the licence, or of a foreign gambling corporation in relation to that holder, or
 - (ii) the outcome of remote gambling conducted under the licence;”;
- (k) after paragraph (2)(f) there is added the following sub-paragraph –
- “(g) its policy published under paragraph (1C).”;
- (l) after paragraph (2) there is added the following paragraph –

- “(3) If the application is for a licence to take effect on the expiry under Regulation 7(2)(b) of another licence, the Commission –
- (a) shall consider whether it holds any relevant information previously obtained by it in connection with the expiring licence; and
 - (b) may rely on that information unless it has any reason to believe that the information may not still be current.”.

11 Amendment of Regulation 9

In Regulation 9 of the principal Regulations –

- (a) for paragraph (2) there are substituted the following paragraphs –

“(2) A remote gambling operator’s licence shall specify –

- (a) each remote site through which remote gambling may be conducted under the licence, including a unique identifier of the site and any name given to the site;
- (b) the address of the premises in Jersey from which remote gambling is authorized to be conducted under the licence;
- (c) the name of the person who holds a remote gambling facility provider’s licence in relation to any premises in Jersey on which a controlling device may be operated under the licence; and
- (d) the conditions imposed on the licence by and under these Regulations.

(2A) Paragraph (2)(c) applies irrespective of whether the holder of the remote gambling operator’s licence is the same person as the holder of the remote gambling facility provider’s licence or a different person.”;

- (b) in paragraph (3) –

- (i) for the words “remote gambling operator’s licence that is issued to a person in accordance with Regulation 7(4)” there are substituted the words “disaster recovery operator’s licence”, and
- (ii) the words “, if any,” are deleted.

12 Substitution of Regulation 10

For Regulation 10 of the principal Regulations there is substituted the following Regulation –

“10 Annual fees

(1) In this Regulation (and in Regulation 21A) –

- (a) ‘first year of effect’, in relation to a licence, means a period of 12 months after the licence takes effect;
- (b) ‘second year of effect’ and ‘third year of effect’, in relation to a licence, mean a period of 12 months after the first and

- second anniversaries respectively of the date on which the licence takes effect, if the licence continues in effect (irrespective of any suspension) during all or any part of that period.
- (2) The holder of a remote gambling operator's licence shall pay to the Commission the relevant annual fee in relation to the licence within 28 days after the start of each of the first, second and third years of effect of that licence.
 - (3) At the end of a 28 day period referred to in paragraph (2), if the holder of a licence has not paid the relevant annual fee in relation to that year of effect, that licence is revoked by virtue of this paragraph.
 - (4) The revocation of a licence under paragraph (3) does not extinguish the liability to pay the fee.
 - (5) The relevant annual fee for a disaster recovery operator's licence is £5,000.
 - (6) The relevant annual fee for a general remote operator's licence is –
 - (a) the fee notified by the Commission to the licence holder no later than 14 days before the fee is due; or
 - (b) if the Commission fails to give that notification by that date, £35,000.
 - (7) The fee notified by the Commission shall be the amount referred to in paragraph (8) by reference to –
 - (a) the Commission's calculation of the remote gambling yield;
 - (b) if the licence holder has failed to provide evidence of its remote gambling yield to the satisfaction of the Commission, the Commission's estimate of the remote gambling yield; or
 - (c) if paragraph (11) applies, a remote gambling yield treated –
 - (i) as exceeding £6,500,000, or
 - (ii) as being of such lower amount as the Commission may consider reasonable in the circumstances.
 - (8) The amount for the purpose of paragraph (7) in relation to a year of effect of a licence is –
 - (a) £35,000, if there was no remote gambling yield in the relevant period, or if that yield was less than £1,000,000;
 - (b) £70,000, if the remote gambling yield in the relevant period equalled or exceeded £1,000,000 but was less than £6,500,000; or
 - (c) £140,000, if the remote gambling yield in the relevant period equalled or exceeded £6,500,000.
 - (9) The relevant period is –
 - (a) in relation to the fee for the first year of effect, the 12 month period before the start of that year;
 - (a) in relation to the fee for the second year of effect, the first year of effect; and

- (a) in relation to the fee for the third year of effect, the second year of effect.
- (10) The remote gambling yield in a relevant period is the excess, if any, of the sums received in that period from customers, over the sums paid in that period to customers, by the holder of the licence as a result of conducting remote gambling under any general remote operator's licence (whether or not the licence in respect of which the fee is due).
- (11) This paragraph applies if –
 - (a) the Commission notifies a licence holder that it believes that the main purpose, or one of the main purposes, of a transaction is the reduction of the liability of that licence holder to pay an annual fee; and
 - (b) the licence holder fails within a reasonable time of that notification to satisfy the Commission either –
 - (i) that the purpose of reducing liability to an annual fee was not the main purpose or one of the main purposes for which the transaction was effected, or
 - (ii) that the transaction was a bona fide commercial transaction and was not designed for the purpose of reducing liability to an annual fee.
- (12) In paragraph (11) a reference to a transaction includes a combination or series of transactions.”.

13 Substitution of Regulation 11

For Regulation 11 of the principal Regulations there are substituted the following Regulations –

“11 Operator's licence to be subject to conditions

- (1) A remote gambling operator's licence shall be subject to –
 - (a) the conditions specified in Regulations 12 to 15; and
 - (b) the supplementary conditions imposed under Regulation 11A.
- (2) A disaster recovery operator's licence shall in addition be subject to the conditions, if any, specified on the foreign authorization in respect of the foreign gambling corporation in relation to the person holding the licence.
- (3) On granting a disaster recovery operator's licence, the Commission may substitute another condition for, or disapply, a condition that would, but for this paragraph and paragraph (5), be imposed by paragraph (2).
- (4) The Commission shall not substitute or disapply a condition under paragraph (3) unless it considers that it is reasonable to do so in order to –

- (a) make appropriate provision for a difference between Jersey and the home country or territory of the foreign gambling corporation;
 - (b) avoid an inconsistency referred to in paragraph (5); or
 - (c) promote observance of the guiding principles or good practice.
- (5) Paragraph (2) does not apply to the extent that a condition specified on the foreign authorization is inconsistent with –
 - (a) the Law;
 - (b) these Regulations; or
 - (c) a condition specified in any of Regulations 12 to 15.
- (6) The Commission shall not substitute an amended condition under paragraph (3), or impose a supplementary condition under Regulation 11A, if the condition would be inconsistent with –
 - (a) the Law;
 - (b) these Regulations; or
 - (c) a condition specified in any of Regulations 12 to 15.

11A Supplementary conditions

- (1) On granting a remote gambling operator's licence, the Commission shall impose supplementary conditions to which the licence shall be subject.
- (2) The Commission shall determine and publish standard supplementary conditions.
- (3) In imposing supplementary conditions, and in determining standard supplementary conditions, the Commission shall seek to promote observance of the guiding principles, good practice and these Regulations.
- (4) Supplementary conditions, whether standard or otherwise –
 - (a) may apply to all forms of remote gambling or to all licences or may vary by form of remote gambling or licence or other circumstance; and
 - (b) may be framed by reference to a code of practice, and may require compliance with a provision of such a code.
- (5) The Commission shall impose on a licence the standard supplementary conditions applicable to that licence, unless the Commission considers there is an exceptional reason not to do so for a particular licence.
- (6) The Commission may impose on a licence supplementary conditions that are not standard, whether or not it also imposes standard supplementary conditions.
- (7) The supplementary conditions imposed on a licence –
 - (a) shall include conditions (whether standard or otherwise) covering the matters set out in paragraph (8); and

- (b) may include –
 - (i) conditions (whether standard or otherwise) covering any or all of the matters set out in paragraph (9), and
 - (ii) any other condition (whether standard or otherwise) that the Commission considers reasonable to ensure observance of the guiding principles, good practice and these Regulations.

(8) The matters that supplementary conditions shall cover are –

- (a) the systems to be used to make information available to customers about –
 - (i) the availability, under Article 9 of the Gambling Commission (Jersey) Law 2010, of assistance with problems related to excessive gambling,
 - (ii) what may be lost or won in relation to the remote gambling and the chances of winning or losing,
 - (iii) the identity of the licence holder, and
 - (iv) the regulation of the remote gambling by the Commission;
- (b) the systems to be used to carry out checks on the age and vulnerability of customers;
- (c) the manner in which records, accounts and annual statements are to be made, retained, verified and sent to the Commission, including –
 - (i) for a disaster recovery operator's licence, any records, containing information in addition to that notified under Regulations 34 and 39, to enable the Commission to monitor gambling under the licence for the purpose of Regulation 32(2)(ba),
 - (ii) for a general remote operator's licence, time limits to allow for timely calculation and demand of the relevant annual fee under Regulation 10;
- (d) the nature and use of each remote site specified in the licence under Regulation 9, and of any controlling device in respect of the remote gambling conducted under the licence (including any such device outside Jersey);
- (e) whether any connection is permitted between a site or device mentioned in sub-paragraph (d) and –
 - (i) any remote site through which remote gambling is conducted by another person, or
 - (ii) any controlling device operated by or on behalf of another person conducting remote gambling;
- (f) the nature and use of any equipment (other than a controlling device), including software, that is capable of affecting –
 - (i) the outcome of remote gambling under the licence, or

- (ii) whether that gambling will be conducted in accordance with the guiding principles and in compliance with any relevant code of practice;
 - (g) the requirements as to testing and notification before any changes may be made to that equipment or to any controlling device;
 - (h) the systems to be used to ensure that persons employed by the licence holder in particular capacities are suitable, including the checks to be carried out on the suitability of those persons; and
 - (i) the maintenance of the adequacy of the systems referred to in sub-paragraphs (a), (b) and (h) and in Regulation 8(2)(c).
- (9) Without prejudice to the generality of the Commission's power to impose any supplementary condition, the matters that supplementary conditions may cover include –
 - (a) the amounts payable by customers in relation to the remote gambling and the manner in which they are paid;
 - (b) the amounts to be paid to customers in relation to the remote gambling, and any other items or advantages to be given as winnings, and the manner in which they are delivered;
 - (c) the display of information intended to ensure that customers are not misled as to any issue relevant to the fairness of the remote gambling, and the form, location, manner and occasions of the display;
 - (d) the persons who may supply, install or maintain equipment, including software, that may be used in connection with the remote gambling, including any requirements as to approval, certification, qualification or training of those persons;
 - (e) the training of staff in respect of the requirements of the guiding principles, good practice and these Regulations; and
 - (f) the provision and maintenance of a current address at which the licence holder agrees to accept service of any documents under the Law or these Regulations, and which shall be taken to be that person's proper address for the purpose of Article 7 of the Interpretation (Jersey) Law 1954⁵.”

14 Substitution of Regulation 12

For Regulation 12 of the principal Regulations there is substituted the following Regulation –

“12 Condition of licence – use of specified premises

- (1) It shall be a condition of a remote gambling operator's licence that remote gambling shall not be conducted from any premises in Jersey other than premises specified in the licence under Regulation 9(2)(b).

- (2) It shall be a condition of a remote gambling operator's licence that no controlling device in Jersey shall be operated in respect of the remote gambling conducted under the licence, unless the device is on premises in relation to which a person, named on the licence under Regulation 9(2)(c), holds a current remote gambling facility provider's licence."

15 Repeal of Regulations 16 and 17

Regulations 16 and 17 of the principal Regulations are repealed.

16 Amendment of Regulation 18

In Regulation 18 of the principal Regulations –

- (a) in paragraph (1), for the words “natural person who is a Jersey resident, or a body corporate that is incorporated under the Companies (Jersey) Law 1991,” there are substituted the words “Jersey person”;
- (b) in paragraph (2), for the words “set out in Schedule 2” there are substituted the words “published by the Commission”;
- (c) in paragraph (3)(a) for the words “occupy, for a period of not less than 7 years, the premises specified in the application as the place from which” there are substituted the words “occupy the premises specified in the application as the premises from which”.

17 Amendment of Regulation 19

At the end of Regulation 19 of the principal Regulations there is added the following paragraph –

- “(5) If the application is for a licence to take effect on the expiry under Regulation 20(3)(b) of another licence, the Commission –
 - (a) shall consider whether it holds any relevant information previously obtained by it in connection with the expiring licence, and, if so, whether it can rely on that information without repeating any investigation into the same matter;
 - (b) shall reduce the first stage fee if it considers that the full amount is not needed to cover the costs referred to in paragraph (3), whether because any investigation does not need to be repeated or for any other reason; and
 - (c) shall not issue a notice under paragraph (2) unless it considers that that there has been a significant change, since the grant of the expiring licence, requiring further investigation.”.

18 Amendment of Regulation 20

In Regulation 20 of the principal Regulations –

- (a) in paragraph (2)(b) for the words “a resident of Jersey or a company incorporated under the Companies (Jersey) Law 1991” there are substituted the words “a Jersey person”;
- (b) paragraph (2)(d) is deleted;
- (c) at the end of the Regulation there is added the following paragraph –
 - “(3) A licence granted under this Regulation –
 - (a) shall take effect from a date, no earlier than the date of its grant, specified in the licence; and
 - (b) shall expire 3 years after that date.”.

19 Insertion of Regulation 21A

After Regulation 21 of the principal Regulations there is inserted the following Regulation –

“21A Annual fee

- (1) In this Regulation ‘year of effect’ and related expressions have the same meaning as in Regulation 10.
- (2) The holder of a remote facility provider’s licence shall pay to the Commission an annual fee of £5,000 in relation to the licence within 28 days after the start of each of the first, second and third years of effect of that licence.
- (3) At the end of a 28 day period referred to in paragraph (2), if the holder of a licence has not paid the annual fee in relation to that year of effect, that licence is revoked by virtue of this paragraph.
- (4) The revocation of a licence under paragraph (3) does not extinguish the liability to pay the fee.”.

20 Amendment of Regulation 22

For Regulation 22(3) of the principal Regulations there are substituted the following paragraphs –

- “(3) The Commission may impose any condition that it considers reasonable to promote observance of the guiding principles, good practice and these Regulations, including but not limited to –
 - (a) a condition requiring compliance with a provision of a code of practice;
 - (b) a condition restricting the remote gambling that may be conducted from the premises specified in the licence, including restrictions as to –
 - (i) the form of that gambling,
 - (ii) the type of remote gambling operator’s licence under which the gambling is conducted,
 - (iii) the holder of the remote gambling operator’s licence, and whether that person must not be, may be, or must

- only be the holder of the remote gambling facility provider's licence,
 - (iv) any other matter related to that gambling.
- (4) The Commission shall determine and publish –
- (a) standard conditions, applicable to all remote gambling facility provider's licences or varying by form of remote gambling or licence or other circumstance; and
 - (b) a statement of its policy on the circumstances in which it intends generally to impose each standard condition.”.

21 Repeal of Regulation 27

Regulation 27 of the principal Regulations is repealed.

22 Amendment of Regulation 28

In Regulation 28 of the principal Regulations –

- (a) in paragraph (1) for the words “Regulation 11(1)(b) or (c), 11(2)(b) or (c) or 22(1)” there are substituted the words “Regulation 11(2), 11(3), 11A or 22(1)”;
- (b) in paragraph (4) for the words “Regulations 12 to 17 or 23 to 27” there are substituted the words “Regulations 12 to 15 or 23 to 27”.

23 Amendment of Regulation 30

In Regulation 30 of the principal Regulations –

- (a) in the heading, for the word “Minister's” there is substituted the word “Commission's”;
- (b) in paragraph (1) for the words “of his or her own motion” there are substituted the words “of its own motion”;
- (c) in paragraphs (1) and (2) for the words “Regulations 12 to 17 or 23 to 27” there are substituted the words “Regulations 12 to 15 or 23 to 27”.

24 Amendment of Regulation 31

In Regulation 31 of the principal Regulations –

- (a) in paragraph (1) after the words “holder of a licence” there are inserted the words “granted under these Regulations”;
- (b) at the end of the Regulation there are added the following paragraphs –
 - “(3) Paragraph (2) does not apply to a contravention of a condition if –
 - (a) the condition requires compliance with a provision in a code of practice; and
 - (b) the contravention of the condition consists solely of a failure to comply with that provision in that code.

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- (4) Paragraphs (2) and (3) do not limit any power of the Commission in relation to a contravention of –
 - (a) a condition of a licence; or
 - (b) a provision in a code of practice.”.

25 Amendment of Regulation 32

After Regulation 32(2)(b) of the principal Regulations there is inserted the following sub-paragraph –

- “(ba) where the licence is a disaster recovery operator’s licence, remote gambling has been conducted from Jersey under the licence for periods that (by their length, frequency, pattern or otherwise) indicate that the holder can reasonably be expected, having regard to the policy published under Regulation 8(1C), to apply for a general remote operator’s licence if any further remote gambling is to be conducted from Jersey during the period of the suspension;”.

26 Amendment of Regulation 34

In Regulation 34 of the principal Regulations –

- (a) at the end of the heading of the Regulation, there are inserted the words “under disaster recovery licence”;
- (b) for the words “remote gambling operator’s licence” in paragraphs (1), (2)(a), and (5), there are substituted the words “disaster recovery operator’s licence”;
- (c) paragraph (8) is deleted.

27 Amendment of Regulation 35

In Regulation 35 of the principal Regulations –

- (a) at the end of the heading of the Regulation, there are inserted the words “under disaster recovery licence”;
- (b) in paragraph (1) after the words “begins to be conducted” there are inserted the words “under a disaster recovery operator’s licence”.
- (c) in paragraph (3) after the words “begins to be conducted” there are inserted the words “under a disaster recovery operator’s licence”.

28 Amendment of Regulation 36

In paragraphs (1) and (2) of Regulation 36 of the principal Regulations, for the words “remote gambling operator’s licence” there are substituted the words “disaster recovery operator’s licence”.

29 Amendment of Regulation 37

In Regulation 37 of the principal Regulations –

- (a) in paragraphs (1) and (3), for the words “remote gambling operator’s licence” there are substituted the words “disaster recovery operator’s licence”;
- (b) for paragraph (4) there are substituted the following paragraphs –
 - “(4) The Commission may, under paragraph (3), extend the period for which remote gambling may be conducted from Jersey under the licence for the same period as the period sought in the request to which the extension relates, or for a shorter or longer period.
 - (4A) In considering whether (and for what period) to extend a period under paragraph (3), the Commission shall take account of its power to suspend a licence under Regulation 32(2)(ba), but it may extend a period whether or not it proposes to suspend the licence under that power on or after the expiry of the extended period.”.

30 Amendment of Regulation 38

For Regulation 38(1) of the principal Regulations there is substituted the following paragraph –

“(1) If –

- (a) a disaster recovery operator’s licence is granted to a person; and
 - (b) the foreign authorization, in respect of the foreign gambling corporation in relation to that person, is subsequently suspended or revoked,
- the disaster recovery operator’s licence is, by virtue of this paragraph, suspended for the same period, or revoked, as the case may be.”.

31 Amendment of Regulation 39

In Regulation 39(1) of the principal Regulations, for the words “remote gambling” there are substituted the words “disaster recovery”.

32 Amendment of Regulation 40

In Regulation 40(1) of the principal Regulations for the words “from premises owned or leased by him or her” there are substituted the words “under a disaster recovery operator’s licence from premises specified in the remote gambling facility provider’s licence”.

33 Amendment of Regulation 41

In Regulation 41 of the principal Regulations –

- (a) for the heading to the Regulation there is substituted the heading “Supervision of remote gambling”;
- (b) in paragraph (2) –

- (i) for the words “made to him or her” there are substituted the words “made to it”,
- (ii) for the words “he or she thinks fit” there are substituted the words “it thinks fit”.

34 Amendment of Regulation 42

In Regulation 42 of the principal Regulations –

- (a) in paragraph (1)(a), for the words “conducting in Jersey” there are substituted the words “conducting from Jersey”;
- (b) in paragraph (1)(b), for the words “conducted in Jersey” there are substituted the words “conducted from Jersey”;
- (c) for paragraph (3) there is substituted the following paragraph –
 - “(3) The Commission may not issue a compliance direction unless it considers it is the best reasonably available means to ensure observance of any one or more of the following –
 - (a) a condition of the licence;
 - (b) good practice;
 - (c) the guiding principles;
 - (d) any provision of these Regulations;
 - (e) any provision of the Law.”.

35 Amendment of Regulation 43

In Regulation 43 of the principal Regulations –

- (a) after paragraph (1) there is inserted the following paragraph –
 - “(1A) A person notified under Regulation 10(6)(a) of an amount of an annual fee falling within Regulation 10(8)(b) or (c) may appeal to the Royal Court against the decision of the Commission as to the calculation, estimate or treatment of the remote gambling yield under Regulation 10(7).”.
- (b) in paragraph (2) for the words “under Regulation 11(3) or 22(1) to impose a condition” there are substituted the words “under Regulation 11(3), 11A or 22(1) to impose or substitute a condition”.

36 Insertion of Regulation 46A

After Regulation 46 of the principal Regulations there is inserted the following Regulation –

“46A Fees

Any fee payable under these Regulations is payable to the Commission as agent for the States.”.

37 Amendment of Regulation 47

In Regulation 47 of the principal Regulations the words “Disaster Recovery” are deleted.

38 Repeal of Schedules

Schedules 1 and 2 to the principal Regulations are repealed.

39 Transitional provisions

- (1) A remote gambling facility provider’s licence granted under the principal Regulations before the commencement of these Regulations is to be treated after that commencement as if it had been granted under the Regulations as amended.
- (2) Paragraph (1) is subject to the following –
 - (a) nothing in the amendments to the principal Regulations by these Regulations affects the validity of the licence or of any condition imposed on the licence before the commencement of these Regulations;
 - (b) Regulation 20(3) of the principal Regulations does not apply in respect of the licence;
 - (c) Regulation 21A of the principal Regulations does not apply in respect of the licence;
 - (d) Regulation 23(2) of the principal Regulations does not apply in respect of the licence, and instead it is a condition of the licence that the holder shall not permit the conduct of remote gambling from the premises specified on the licence unless the remote gambling is conducted under a disaster recovery operator’s licence by the holder of that licence; and
 - (e) a condition of the licence may not be altered under Regulation 28 or 30 of the principal Regulations unless the altered condition could have had effect if these Regulations had not come into force.
- (3) The holder of a licence in respect of which paragraph (2) applies may apply to the Commission, within one year of the commencement of these Regulations and without payment of a fee, for authorization under paragraph (4).
- (4) If the Commission grants authorization under this paragraph –
 - (a) paragraph (2), and the condition mentioned in paragraph (2)(d), cease to apply in respect of the licence from the date of the grant of authorization;
 - (b) the Commission may, on granting the authorization –
 - (i) amend the form of, or any condition of, the licence in any way expedient to ensure that the licence and conditions conform to any requirement of a provision of the principal Regulations that is amended by these Regulations, and

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- (ii) impose conditions on the licence in respect of the conduct, under a general remote operator's licence, of remote gambling from the premises specified on the licence;
 - (c) Regulation 20(3) of the principal Regulations does not apply, but the licence expires 3 years after the grant of authorization; and
 - (d) Regulation 21A of the principal Regulations applies to the licence as if the first year of effect of the licence started on the grant of authorization.
 - (5) The Commission shall not exercise a power under paragraph (4)(b) unless it has first notified the holder of the licence of the intended exercise, considered any representations from the holder and afforded the holder a reasonable opportunity to decide whether to withdraw the application.

40 Citation and commencement

These Regulations may be cited as the Gambling (Remote Gambling Disaster Recovery) (Amendment) (Jersey) Regulations 201- and come into force 14 days after they are made.

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- ¹ *chapter 11.300*
 - ² *chapter 11.300.80*
 - ³ *L.11/2010*
 - ⁴ *chapter 13.125*
 - ⁵ *chapter 15.360*