

**C01/2022**



**Command Paper on  
a draft Bill for an Act  
to repeal and replace the Gambling Act 2005**

**by Command of Her Majesty**

**31 May 2022**

Comments on this Command Paper should clearly reference 'Command Paper on a Bill for a new Gambling Act (CO1/2022)' and be sent by email to [gamblingconsultation@gibraltar.gov.gi](mailto:gamblingconsultation@gibraltar.gov.gi) or delivered no later than 31 August 2022 to:

Gambling Division  
Ministry of Digital and Financial Services  
HM Government of Gibraltar  
Suite 812/813  
Europort  
Gibraltar  
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Any comments received after this date are unlikely to be taken into account for the purposes of the relevant consultation.

## Command Paper on a Bill for an Act to repeal and replace the Gambling Act 2005.

### Foreword

Gibraltar's historical and continuing successful hosting of the online gambling industry is the result of Government policies, reflected in licensing and regulatory legislative framework and practices based on a partnership of shared interests between Gibraltar and the industry. This acknowledges the need to create a supportive environment in which the industry can develop, grow and prosper, while at the same time protecting both Gibraltar and those established in the industry here from the adverse reputational consequences of bad and unacceptable practices. Gibraltar understands the needs of the industry, and welcomes its presence here. None of this will change.

But the industry, the technology with which it operates, its other needs and indeed, global attitudes to online gambling have changed since Gibraltar established its current licensing and regulatory framework in the Gambling Act 2005. In order for Gibraltar to remain an attractive, as well as a globally acknowledged reputable location for the industry, the Government considers that it is necessary to change the legislative framework to reflect the current needs and circumstances. To this end, the Government proposes to repeal and replace the Gambling Act 2005.

The draft Bill for a new Gambling Act ("**the Bill**") is attached to this Command Paper. The scheme of the Bill has its origins in a report dated 29<sup>th</sup> March 2016 entitled "*Gibraltar: Online Gambling – a vision for continuing success*" ("**the Report**"). The Report, which reviewed the legislative, licensing and regulatory regime and related issues, was published and has itself been the subject of extensive, informal consultation.

However, like the Gambling Act 2005, the Bill also applies, as appropriate, to land - based gambling.

The Bill seeks to preserve and enshrine Gibraltar's supportive and understanding approach to the proper and reasonable needs of the online gambling industry, while better equipping the licensing authority and the regulator to be responsive both to the changed and changing needs of the industry and also to Gibraltar's regulatory objectives.

Broadly, the Bill seeks to establish more flexibility in relation to licensing (especially around the issue of equipment location), to extend the activities that require licensing and extend the categories of licenses, and to introduce formal processes, and greater transparency and accountability of decision-making by the licensing authority and the regulator. The Bill introduces a right of appeal to a new Gambling Appeals Tribunal. The Bill also introduces an "approved persons" regime requiring persons carrying out certain functions (regulated functions) to be approved by the regulator (regulated individuals). The Bill also introduces a regime in relation to changes in shareholder control of a licensed gambling operator. Finally, the Bill provides for an appropriate range of modern, regulatory investigatory and

enforcement powers and sanctions. These are designed and intended to ensure that the licensing authority or the regulator (as the case may be) has the necessary options to ensure an appropriate and timely, but fair and proportionate response to regulatory and licensing contraventions.

Finally, the Bill intentionally draws from, and replicates parts of the Financial Services Act 2019. This is intended to facilitate the emergence of a “Gibraltar style and approach” to licensing and regulation of regulated industries, such as will facilitate professional understanding and familiarity, and consistency of approach, and to applicable jurisprudence in our courts.

I look forward to receiving your comments.

**The Hon. Albert J Isola MP**  
**Minster with responsibility for gambling.**

**A. Part 1 of the Bill (sections 1-3)**

1. Part 1 of the Bill deals with definition of words and terms used in the Bill. Many of these defined words and terms simply facilitate the reading of the Bill. The definition of technical terms relevant to the gambling activity remain broadly the same as in the gambling Act 2005. Part 1 also introduces a regime to facilitate electronic communications between (i) the licensing authority and regulator and (ii) license holders and regulated individuals.

**Consultation question 1**

*Do you agree with the definition of words and terms in Part 1?*

**B. Part 2 of the Bill (sections 4-14)**

2. Part 2 of the Bill deals with the establishment and functions of the licensing authority (it remains the Minister or whomever else he appoints), the establishment, functions and manner of discharge of functions of the regulator (it remains the Commissioner), and also establishes the regulatory objectives in relation to gambling.
3. The Licensing Authority

The Bill preserves the separation of the licensing and regulatory functions. The Minister (or whomever else he may appoint) remains the licensing authority.

**Consultation question 2**

*Do you agree that the licensing and regulatory functions should remain separate? If not, please explain the reasons for your views.*

4. The Commissioner and the Gambling Division

The Bill enshrines the role of the Gambling Commissioner as the gambling regulator, and also gives legislative standing to the Gambling Division. The Gambling Division is part of the Ministry for Digital and Financial Services within which sits responsibility for gambling. The Gambling Division is not a separate, independent statutory body. The Government considers that this

better enables the Government's policies in relation to the gambling industry to be reflected in the approach to regulation, albeit that day to day regulation will be conducted at arm's length by the Commissioner.

### **Consultation question 3**

*Do you agree that the Commissioner and the Gambling Division should remain part of the Ministry for Ministry of Digital and Financial Services, and not be a separate and independent statutory body? If not, please explain the reasons for your views.*

### **5. Gambling Regulatory Objectives**

Section 9, as expanded by Schedule 1, set out the regulatory objectives in relation to gambling. These are important to the scheme of the Bill because they will motivate, guide and underpin the exercise of licensing and regulatory decisions, and the exercise of powers, under the provisions of the Bill.

The gambling regulatory objectives are –

- (a) the preservation of confidence in gambling markets;
  - (b) the protection of consumers, especially children, young persons and problem gamblers;
  - (c) the promotion of fair and responsible gambling;
  - (d) preventing gambling being a source of crime, being associated with crime or being used to support or proliferate financial crime;
  - (e) the public interest of Gibraltar including (but not limited to) its reputation and macro-economic interests,
- as more specifically described in Schedule 1 to the Bill.

### **Consultation question 4**

*Do you agree with the gambling regulatory objectives? If not, please explain the reasons for your views.*

### **6. Rules, Codes of Practice and Guidelines**

The Bill empowers the Commissioner (with the consent of the Minister, who may also direct the Commissioner to revoke or amend any that are issued) to make

rules and to issue guidance and codes of practice in relation to a wide range of specified matters, and generally in relation to matters relevant to gambling and the regulatory objectives. Licence holders must comply with these.

### **Consultation question 5**

*Do you agree that enabling the creation of a mandatory ecosystem of rules, codes of practice and guidance will better enable the achievement of the regulatory objectives and the preservation of a consistent level playing field in which licence holders may operate and compete effectively, fairly and safely in a well-regulated space? If not, please explain the reasons for your views.*

### **C. Part 3 of the Bill (sections 15-30)**

7. Part 3 of the Bill deals with regulated activities and prohibited activities. Regulated activities are prohibited unless carried on pursuant to a licence issued under the Act or the person is exempt.
8. Regulated activities are the activities listed in section 17 of the Bill, when they are carried on in or from Gibraltar. Section 30 makes specific provisions for certain cases in which activities will be deemed to be carried on in or from Gibraltar, even if that would not otherwise be the case. These relate to the presence in Gibraltar of registered office, head office, establishment or management.
9. The essence of the policy underpinning Part 3 is to ensure that any activity that can have reputational consequences for Gibraltar in the context of online gambling is caught by the licensing and regulatory regime of the Act.
10. Section 17 is therefore a key section, as it lists the regulated activities which will henceforth require a licence. In relation to online gambling, this is much broader than the current regime under the Gambling Act 2005. Regulated activities include—
  - (i) B2C remote gambling i.e. carrying on the business of remote gambling, or conducting, managing or providing facilities for remote gambling with, to or for the benefit of members of the public where the member of the public enters into a gambling contract regardless of where in the world the member of the public is.
  - (ii) B2B remote gambling i.e. carrying on the business of remote gambling, or conducting, managing or providing facilities for remote gambling with, to or for (i) another Gibraltar licence holder or (ii) an entity elsewhere doing things which, if they were being done in or from Gibraltar, would be a regulated activity here.

- (iii) Non-remote gambling i.e. carrying on business of, or conducting, managing or providing non-remote gambling or facilities for non-remote gambling in or from Gibraltar.
- (iv) B2B non-remote gambling i.e. distributing, supplying, selling, leasing or servicing gambling machines.
- (v) Betting exchange, betting intermediary or betting agent i.e carrying on business of, or conducting, managing or providing facilities for carrying on the business of a betting exchange or betting intermediary or a betting exchange (being each of them defined terms).
- (vi) Marketing and advertising i.e. conducting, managing or providing advertising or marketing services for gambling wherever in the world the gambling takes place, except exempt advertising or marketing.
- (vii) Ownership of remote gambling provider elsewhere i.e., a person or a partnership or a trust (as the case may be) which is incorporated, registered, or has a place of business in, or is managed or controlled in or from Gibraltar or is subject to the laws and/or jurisdiction of the courts of Gibraltar in respect of its general affairs or constitution from, being directly or indirectly the holding company for, or legally or beneficially owning shares in a Relevant Company.
- (viii) Hosting equipment i.e. hosting remote gambling equipment used in connection with or for remote gambling.
- (ix) Providing resilience facilities i.e providing disaster recovery and or business continuity facilities in connection with or for remote gambling.
- (x) Client funds holding i.e. holding or managing customer funds in connection with remote gambling (save in the case of a licensed credit institution).
- (xi) Co-location or shared technology i.e. providing to a licence holder co-location and or other managed technology services including (but not limited to) cloud services or decentralised hosting protocols.
- (xii) Such other activities as the Minister shall prescribe.

11. Notwithstanding section 17, the marketing and advertising, hosting, providing resilience facilities, client fund holding and co-location or shared technology



activities shall not require to be licensed when provided to a Gibraltar licence holder by another company in the same group, or to itself.

12. Section 19 is also a key section, because it contains expanded, detailed provisions of what constitutes “providing facilities for remote gambling”. These are-

(a) at least one piece of remote gambling equipment used in the conducting, managing or provision of the facilities is situated in Gibraltar; or

(b) in or from Gibraltar, carrying on or conducting, or being responsible for the organisation, authorisation or production of remote gambling regardless of whether the gambling takes place in Gibraltar or elsewhere; or

(c) in or from Gibraltar, conducting or being responsible for the organisation or operation or any other form of management of remote gambling equipment located anywhere in the world; or

(d) in or from Gibraltar, entering into, offering to enter into or holding out as able or willing to enter into a gambling transaction, whether remotely or non-remotely, regardless of whether the gambling is to take place in Gibraltar or elsewhere.

(e) providing, in or from Gibraltar one or more B2B Services (i.e. the services listed in 19(2)(i)) to a licence holder.

13. (1) Section 19(2) defines “remote gambling equipment” in terms that are broadly unchanged (though some parts of that definition have been moved to the definition of “remote gambling” in section 2(1) , and Section 17(3) illustrates what “providing facilities for remote gambling” includes, namely –

(a) Content aggregator services or facilities;

(b) Server-based content software;

(c) Live gaming services or facilities;

(d) A platform for gaming and or betting;

(e) Real betting data, event content and or odds;

(f) Managed trading services

(g) Virtual or simulated content for the purposes of betting;

(h) One or more of the following services in connection with gambling –

i. Fraud prevention and or risk management services;

ii. Customer due diligence assessment or compliance;

iii. Customer identification verification services.

(2) Although the Bill requires external (to Gibraltar) providers of content software to a licence holder to itself be licenced in Gibraltar, this will not be required when the content software is provided by the external supplier to

holders of a B2B Gambling Operator's Licence which is licensed to provide content aggregation services or facilities.

14. Section 20 provides for a modified regime such as is contained in the section 26 of the Gambling Act 2005, giving the Commissioner power to seek information concerning providers of software to licensees. However, the regime in section 20 extends this power to all B2B Services (as defined in section 2(1), namely, all the services listed in section 19(2). These services are the following:

- (a) content aggregation services or facilities;
- (b) server-based content software;
- (c) live gaming content, services or facilities;
- (d) hosting of supplied content software where a B2B software supplier hosts its own proprietary content on a proprietary platform;
- (e) other platform services used for the delivery of gaming or betting software or content;
- (f) real event betting data, including odds;
- (g) managed trading services;
- (h) virtual or simulated content for the purposes of betting;
- (i) other betting, gaming or lottery software;
- (j) one or more of the following services in connection with gambling when the exercise of those functions as a whole have been substantially contracted out by a licence holder to the person providing the services—
  - i. Fraud prevention and or risk management services;
  - ii. Customer due diligence assessment or compliance;
  - iii. Customer identification verification services; and
  - iv. Customer relationship management services; and
- (k) such other services or facilities as may be prescribed by the Minister.

#### **Consultation question 6**

*Do you agree with the policy underpinning Part 3 that any activity that can have reputational consequences for Gibraltar in the context of online gambling should be caught by the licensing and regulatory regime of the Act?*

#### **Consultation question 7**

*Do you agree with the activities that will be regulated activities and thus require a licence, as set out in section 17 (bearing in mind that these activities will not require to be licenced when provided to a licence holder (i) by itself internally or (ii) by another member of the group)?*

### Consultation question 8

*Do you agree with the expanded, detailed provisions of what constitutes “providing facilities for remote gambling” set out in section 19?*

### Consultation question 9

*Do you agree with the regime in section 20. If not, please explain the reasons for your views.*

#### **D. Part 4 of the Bill (sections 31-54)**

15. Part 4 of the Bill deals with licensing and exemptions. Sections 39 and 40 are key because they introduce a new approach to licensing based on having a “**sufficient substantive presence**” in Gibraltar, which is intended to provide the licensing authority with appropriate flexibility in relation to equipment location and other matters. Section 36 is also important because it introduces the concept of “threshold conditions”, which are standards of practice and behaviour applicable to all licence holders.

16. The threshold conditions are set out in some detail in Schedule 2, and these may be added to or modified, or disapplied, by the Minister by regulations. They relate to-

- (i) Conduct of business
- (ii) Location of offices
- (iii) Appropriate resources
- (iv) Effective supervision
- (v) Suitability (fit and proper)
- (vi) Suitability (of business model for the regulated activity carried out)
- (vii) Procedures and internal controls
- (viii) Payment of fees and taxes
- (ix) Responsible gambling
- (x) Minimum age for gambling
- (xi) Customer registration
- (xii) Duty of candour and spontaneous cooperation with licensing authority and regulator
- (xiii) Protection of customer funds
- (xiv) Payment of winnings
- (xv) Prevention of financial crime
- (xvi) Publications of terms and conditions of business
- (xvii) Complaints procedure

17. Licences will be issued by the Licensing Authority (who is the Minister unless he appoints someone else to do it) to carry on one or more regulated activities. A licence may authorize remote or non-remote gambling, but not both.

18. Section 38 introduces a new nomenclature for the different types of gambling licences created by section 17. Three different licences are created, as follows:

(1) **B2C Gambling Operator’s licence**, which comprises the following regulated activities:

- (i) Carrying on the business of remote gambling, or conducting, managing or providing facilities for remote gambling with, to or for members of the public (“A”) where A enters into a gambling transaction regardless of whether A is in Gibraltar or elsewhere.
- (ii) Carrying on the business of, or conducting, managing or providing non-remote gambling or facilities for non-remote gambling in or from Gibraltar (“non-remote gambling”).
- (iii) Acting as or carrying on the business of, or conducting, managing or providing facilities for carrying on the business of a betting exchange or betting intermediary or a betting agent.

(2) **B2B Gambling Operator’s licence**, which comprises the following regulated activities:

Carrying on the business of remote gambling, or conducting, managing or providing facilities for remote gambling with, to or for a licence holder or a person or entity (“C”) who conducts, manages or provides facilities for remote gambling in or from a place other than Gibraltar which, if done by C in or from Gibraltar would be a regulated activity.

(3) **Gambling Operator Support Services licence**, which comprises the following regulated activities:

- (i) Conducting, managing or providing advertising or marketing services for gambling wherever in the world the gambling takes place, except exempt advertising or marketing; or
- (ii) A person or a partnership or a trust (as the case may be) which is incorporated, registered, or has a place of business in, or is managed or controlled in or from Gibraltar or is subject to the laws and/or jurisdiction of the courts of Gibraltar in respect of its general affairs or constitution from, being directly or indirectly the holding company for, or legally or beneficially owning shares in a Relevant Company; or

- (iii) Hosting remote gambling equipment used in connection with or for remote gambling; or
- (iv) Providing disaster recovery and or business continuity facilities in connection with or for remote gambling; or
- (v) Holding or managing customer funds in connection with remote gambling (save in the case of a licensed credit institution); or
- (vi) Providing to a licence holder co-location and or other managed technology services including (but not limited to) cloud services or decentralised hosting protocols ; or
- (vii) Such other activities as the Minister shall prescribe.

19. A B2C Gambling Operator's licence and B2B Gambling Operator's licence also authorized the conduct of advertising and marketing services of gambling, which otherwise require a Gambling Operator Support Services licence.

20. Sections 36 (Threshold Conditions), 39 (criteria for issuing a licence) and 40 (sufficient substantive presence in Gibraltar) are the core of the new approach to licensing established by the proposed new Act. Section 36 (Threshold Conditions) is dealt with in para 15 above.

21. Section 39 requires the Licensing Authority to be satisfied of two things when giving or varying a licence, or imposing or varying a requirement on the licence holder, namely that the applicant or licence holder (as the case may be) –

- (i) will satisfy and continue to satisfy or (in the case of an existing licence holder) is satisfying, the threshold conditions; and
- (ii) will have, and continue to maintain or (in the case of an existing licence holder) has a sufficient substantive presence in Gibraltar.

In other words, the core concepts are (i) standards and suitability, and (ii) having a sufficient substantive presence in Gibraltar. These are the criteria both for the grant of a licence and, on an on going basis, for an own initiative decision by the licensing authority to consider revoking or varying a licence (if the existing licence holder ceases to comply with the threshold conditions or ceases to have a sufficient substantive presence in Gibraltar). But an existing licensee will be able, at any time and from time to time during the currency of the licence, to seek to agree with the Licensing Authority a different mix of variable factors amounting to

sufficient substantive presence in Gibraltar. This offers the possibility of accommodating changing business models.

22. Section 40 gives the licensing authority a very large degree of latitude and discretion in deciding whether an applicant or existing licence holder will have or has a sufficient substantive presence in Gibraltar. In considering this the authority must have regard to all or any (in such combination and measure as he shall think appropriate in his discretion) of the following matters –

- (a) The nature, extent, purpose and usage of the remote gambling equipment located or to be located and maintained in Gibraltar;
- (b) The number and nature of jobs to be created and maintained in Gibraltar;
- (c) The amount of tax revenues that will accrue or is accruing to the Government; and
- (d) Such other factors as appear to the Authority to constitute a sufficient substantive presence in Gibraltar.

23. Furthermore, the Minister will have the power by regulations to modify, or to add or remove matters to the list in para 21 above.

24. Sections 41 to 46 create powers -

(1) for the licensing authority to vary or cancel a licence at the licence holder's request;

(2) for the licensing authority to vary or cancel a licence on his own initiative, and for the Commissioner, with the prior consent of the licensing authority, to impose requirements on a licence holder. These power are exercisable when –

- (a) the licence holder is failing, or is likely to fail, to satisfy any of the threshold conditions;
- (b) the licence holder is failing or is likely to fail to maintain a sufficient substantive presence in Gibraltar in accordance with section 40;
- (c) the licence holder has failed, during a period of at least 12 months, to carry on a regulated activity to which its licence under this Part relates;
- (d) exercising the power–
  - (i) is necessary in order to avoid or reduce significant risk to any of the regulatory objectives; and
  - (ii) would be reasonable and proportionate having regard to all the circumstances.

25. Sections 48 to 54 make procedural provisions for the submission and determination of applications, and for the exercise of the powers to set out a

detailed procedure for the exercise of the powers to vary or cancel a licence or to impose requirements. In short, a warning notice of proposed action needs to be given, followed by an opportunity to the licence holder to make representations, followed by the issue of a decision notice with the final decision. Section 52 provides for the exercise of these powers in urgent cases without following this procedure. Urgency is carefully defined.

#### **Consultation question 10**

*Do you agree with or have any comments about the proposed Threshold Conditions?*

#### **Consultation question 11**

*Do you agree with “sufficient substantive presence in Gibraltar”, as defined, being the key criteria for initial and continuing licensing in Gibraltar?*

#### **Consultation question 12**

*Do you agree with or have comments in relation to the powers to vary or cancel licences, and to impose restrictions on them, and /or the grounds on which those powers can be exercised?*

#### **Consultation question 13**

*Do you agree with or have comments in relation to the procedures for exercising these powers?*

### **E. Part 5 of the Bill (sections 55-77)**

26. Part 5 of the Bill establishes an “approved persons” (called **regulated individuals**) regime in respect of identified key functions (called **regulated functions**) in Gibraltar licence holders.

27. Regulated functions are listed in Schedule 3. They are as follows:

- (1) Chief Executive Officer
- (2) Managing Director
- (3) Financial Management (CFO or equivalent)
- (4) Head of Regulatory compliance
- (5) Money Laundering Reporting Officer
- (6) Head of Safer or responsible gambling
- (7) Head of marketing and/or commercial development
- (8) IT infrastructure and Cyber security (CIO or equivalent)
- (9) Management of gaming operations and floor management in land-based casinos

28. The functions of CEO and MD must be performed by a regulated individual. The other functions must be performed either by or under the supervision of a regulated individual. There are provisions for temporary situations while a regulated individual who ceases is replaced.
29. Regulated individuals are individuals who have been approved by the Commissioner to perform one or more regulated functions. The licence holder must apply to the Commissioner for approval of an individual to perform or supervise the performance of a regulated function. The Act sets out the procedure for doing so, and the criteria for consideration of applications.
30. Licence holders must immediately notify the Commissioner of changes or cessers of regulated individual performing or supervising the performance of regulated functions.
31. Both the Licence holder and the individual concerned may appeal a refusal by the Commissioner to approve a person to be a regulated individual in respect of a regulated function.

#### **Consultation question 14**

*Do you agree with or have any comments on the provisions relating to regulated functions and regulated individuals?*

#### **F. Part 6 of the Bill (sections 78-101)**

32. Part 6 of the Bill deals with the acquisition of or increase in control over a licence holder. This Part replicates corresponding provisions in the Financial Services Act. Its purpose is to protect the regulatory objectives from the adverse consequences of an unfit person acquiring, increasing or retaining control over a licence holder. A person who decides to acquire or increase control over a licence holder must give the Commissioner notice before making the acquisition.
33. A person acquires control of a licence holder if he acquires 10% or more of its shares or in the shares of a parent undertaking, otherwise holds 10% or more of the voting power in the licence holder or is able to exercise significant management control by virtue of sharing voting power with others (see section 86). A person increases control if in one of these way he steps from less than 20% to 20% or more, or from less than 30% to 30% or more or from less than 50% to 50% or more. There are provisions to disregard certain types of holdings for these purposes.



34. The Authority may approve, approve with conditions or object to the acquisition or increase, or to the retention of control by a person. In considering this he must have regard to the following matters:

- (a) the reputation of the person;
- (b) the reputation, knowledge, skills and experience of any person who will direct the business of the licence holder as a result of the proposed acquisition;
- (c) the financial soundness of the person, in particular in relation to the type of business that the licence holder pursues or envisages pursuing;
- (d) whether the licence holder will be able to comply with prudential requirements (including the threshold conditions in relation to all of the regulated activities for which it has or will have permission);
- (e) if the licence holder is to become part of a group as a result of the acquisition, whether that group has a structure which makes it possible to exercise effective supervision, exchange information among regulators and determine the allocation of responsibility among regulators; and
- (f) whether there are reasonable grounds to suspect that in connection with the proposed acquisition financial crime is being or has been committed or attempted or the risk of such activity could increase.

35. Sections 96 and 97 establish procedures whereby the licensing authority may (i) place restrictions on shares and the voting rights attached to shares and/or to apply to the Supreme Court for an order that the shares be sold and/or voting rights disposed of. These powers may be exercised where an acquisition or retention of control has been objected to. Section 98 imposes an obligation to inform the Commissioner of a reduction in control or if a person ceases to have control.

36. Failure to comply with these provisions constitutes an offence.

#### **Consultation question 15**

*Do you agree with or have comments in relation to the provisions relating to control of a licence holder?*

**G. Parts 7, 8, 9 and 10 of the Bill deal with the supervisory, regulatory and sanctioning powers of the Gambling Commissioner, and with procedural aspects of the exercise of those powers. They replicate, with some exceptions, the corresponding provisions of the Financial Services Act. This will help to establish a common**

**regulatory framework, and professional understanding and expertise across regulated economic activities with similar statutory regulatory objectives.**

#### **H. Part 7 of the Bill (sections 102-117)**

37. Part 7 of the Bill grants the Gambling Commissioner extensive powers, typical of modern regulators' powers, to gather information and conduct investigations in support of administering the Act and its regulatory objectives. They affect current and former licence holders and regulated individuals, and parent and group companies, and controllers. These are called **Relevant Persons**.

38. The Commissioner may require Relevant Persons to provide information and documents and to attend before the Commissioner to answer questions. He may also carry out on site inspections and apply to the courts for the issue of an entry and search warrant if certain circumstances exist and strict conditions are met (see section 106).

39. The Commissioner may also require a licence holder to appoint a person approved by the Commissioner to conduct a Skilled Person's report about the conduct of the affairs of a licence holder or the group of which it is a part.

40. The Commissioner may also appoint inspectors to conduct an investigation if he reasonably believes that a contravention of the Act has taken place or there is some good reason or ground for doing so. Inspectors have considerable powers to require and obtain information and documents. There is a statutory duty to cooperate with inspectors, failure to do which will constitute an offence. The costs are to be borne by the licence holder or regulated person concerned.

#### **Consultation question 16**

*Do you agree with or have comments in relation to the provisions relating to-*

- (a) Gathering of information and documents by the Commissioner;*
- (b) Requiring the appointment of a Skilled Persons to produce a Reports*
- (c) Appointment of Inspectors?*

#### **I. Part 8 of the Bill (section 118-134)**

41. Part 8 establishes a wide range of sanctioning powers applicable to both licence holders and regulated individuals. These will allow the Commissioner to respond

to any contraventions in a way which is fair and proportionate having regard to the extent of the threat to the regulatory objectives.

42. The sanctioning powers are –

(a) the imposition of:

- (i) an administrative penalty i.e. a fine to be paid;
- (ii) a cease and desist order, requiring the person to cease any conduct which constitutes a contravention, and to desist from any repetition of that conduct;
- (iii) a temporary suspension of licence order, which may temporarily suspend the licence to carry on a regulated activity or may impose limitations or restrictions on doing so; and/or
- (iv) a prohibition order, which may prohibit an individual from exercising regulated functions in a licence holder; and/or

(b) the making by the Commissioner of a public statement, in which the Commissioner publicly identifies the contravener and the type and nature of the contravention.

43. There is an obligation on the Commissioner to ensure that the type and level of a sanctioning action is “reasonable, proportionate, effective and dissuasive”, taking into account the following criteria:

- (a) the gravity and the duration of the contravention;
- (b) the degree of responsibility of the person against whom the sanctioning power is being exercised;
- (c) the financial strength of the person, for example as indicated by turnover or annual income;
- (d) in so far as they can be determined–
  - (i) the importance of the profits gained or losses avoided by virtue of the contravention;
  - (ii) the losses sustained by others as a result of the contravention;
  - (iii) where applicable, the damage to the functioning of markets or the wider economy;
  - (iv) the prejudice caused to the gambling regulatory objectives.
- (e) the level of cooperation with the Commissioner by the person;
- (f) previous contraventions by the person;

- (g) measures taken after the contravention by the person to prevent its repetition; and
- (h) whether the person has complied with guidance relevant to the subject matter of the contravention.

44. Before issuing any sanction, the Commissioner must follow the Warning/Decision Notice procedure (as to which see paras 47-50, below). A decision by the Commissioner to issue a sanction is subject to a right of appeal (as to which see paras 53 to 56, below). The Commissioner can avoid the Warning Notice procedure in urgent cases without following this procedure. Urgency is carefully defined.

#### **Consultation question 17**

*Do you agree with or have comments in relation to the provisions relating to sanctions?*

#### **J. Part 9 of the Bill (sections 135-137)**

- 45. Part 9 of the Bill contains provisions empowering the Commissioner to apply to the Supreme Court for an injunction order or a restitution order.
- 46. An injunction order is to prevent a licence holder from contravening or continuing to contravene the Act.
- 47. A restitution order would require a licence holder to disgorge any profit made by it, or loss suffered by others as a result of a contravention.

#### **Consultation question 18**

*Do you agree with or have comments in relation to the provisions in Part 9?*

#### **K. Part 10 of the Bill (sections 138-144)**

- 48. Part 10 of the Bill sets out detailed provisions in relation to the Warning Notice/ Decision Notice Procedure. It also deals with how and when the Commissioner may publish the imposition of a sanction.
- 49. Before exercising a licensing, regulatory enforcement or sanctioning power, the Authority or the Commissioner (as the case may be) must issue a Warning Notice, which must set out full details of the actions that he proposes to take, the reasons for proposing to take it and the evidence on which the decision to issue a warning Notice was taken.

50. The person to whom a warning Notice is issued has 28 days in which to make representations, orally, in writing, or both. The Commissioner may extend this period of time.
51. After considering any representations made, the decision-maker must then issue a Decision Notice setting out the action that he will take, if any, and the reasons for doing so, or that he will take no action.
52. Subject to considering not doing so on one of the grounds set out in the Act (in section 142), the Commissioner may publish on this website details of any sanctions imposed and the identity of the person on whom they have been imposed. Publication shall be for a proportionate and limited period depending on the nature of the sanction.
53. The Commissioner may not ordinarily publish a sanction until the appeal process is exhausted, or the period for appealing has expired without appeal. However, the Commissioner may apply to court for permission to publish before the appeal if that is necessary to protect the interests of consumers.

#### **Consultation question 19**

*Do you agree with or have comments in relation to the provisions relating to the Warning Notice/ Decision Notice procedures and to publication of sanctions imposed?*

#### **L. Part 11 of the Bill (sections 145-148)**

54. Part 11 of the Bills deals with Appeals.
55. All decisions of the Licensing Authority and the Commissioner are subject to a right of appeal except a decision by the Licensing Authority to:
- (i) refuse to issue a licence;
  - (ii) refuse to vary or cancel a licence at the request of the licence holder;
  - (iii) approve an acquisition of control in a licence holder subject to conditions, or to object to such acquisition; or
  - (iv) object to existing control of a licence holder.
56. Part 11 establishes the Gambling Appeals Tribunal to hear and determine appeals. The Tribunal will be comprised of suitable, experienced persons appointed by the Minister.

57. All appeals are, in the first instance, to the Gambling Appeals Tribunal. The purpose of this is principally to ensure that appeals are disposed of more quickly than the courts are usually able to deal with matters, given that the effects of a decision are NOT suspended pending the determination of an appeal. There is however, a provision that allows a licence holder or regulated individual to apply to the court on an expedited basis for an order that the effect of an appealed decision be suspended pending appeal.
58. There is a further right of appeal to the Supreme Court, from a decision of the Gambling Appeals Tribunal, on a point of law only.

### **Consultation question 20**

*Do you agree with or have comments in relation to the provisions relating to:*

- (a) The nature and extent of the right of appeal*  
*(b) The creation and role of the Gambling Appeals Tribunal?*

### **M. Parts 12, 13, 14 and 15 of the Bill (sections 149-178)**

59. Part 12 impose duties of confidentiality on those administering the Act, but also creates gateways for co-operation with and assistance to other law enforcement agencies and regulators in Gibraltar and regulators and law enforcement authorities abroad.
60. Part 13 grants to the Minister power to make regulations in relation to a wide range of technical issues listed in sections 157 to 162. These may relate to:
- (i) General matters for the purposes of advancing one or more of the regulatory objectives, including
    - (a) prudential standards;
    - (b) systems and controls;
    - (c) business standards;
    - (d) regulatory processes;
    - (e) complaints processes and procedures;
    - (f) accounting and record keeping requirements;
    - (g) responsible gambling;
    - (h) minimum age for gambling (and different ages may be established for different forms of gambling);
    - (i) advertising and marketing of gambling;
    - (j) the supply and procurement of gambling software;

- (k) gambling machines;
- (l) particular provisions applicable to specific forms of gambling or regulated activities;
- (m) customer funds
- (n) for the purposes of implementing technical standards to be met;
- (o) imposing requirements to report to the Commissioner about matters of a specified description or in specified circumstances;
- (p) about the disclosure and use of information held by the person (“control of information regulations”).
- (q) conferring rights on persons to rescind agreements with, or withdraw offers to, licence holders within a specified period;
- (r) for the restitution of property and the making or recovery of payments where those rights are exercised; and
- (s) in connection with advertising, unsolicited communications or other promotions made by or on behalf of licence holders .

- (ii) Fees;
- (iii) Licensing;
- (iv) Penalties;

61. Part 14 creates offences.

62. Part 15 contains provisions relating to immunity from suit of the Licensing Authority, the Gambling Commissioner and his staff, data protection, validity of gaming contracts, exemption from the Shop Hours Act and continuity of the law.

63. Section 177 and Schedule 8 contain transitional provisions to ensure (i) continued validity of existing licences and (ii) the continued legality of activities that currently do not require a licence, but do under the new Act, until new licences are issued under the Act. There are grandfathering provisions.

#### **Consultation question 21**

*Do you agree with or have comments in relation to the provisions relating to the transitional provisions in Schedule 8?*

#### **(Final) Consultation question 22**

*Do you disagree with or have any comments in relation to any other aspect of the Bill?*

ENDS

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**BILL**

**FOR**

**AN ACT** to repeal the Gambling Act 2005 and to make new provision for the licensing, regulation and supervision of gambling, and for connected purposes.

**ENACTED** by the Legislature of Gibraltar.

**PART 1**

**PRELIMINARY**

**Title and commencement.**

1.(1) This Act may be cited as the Gambling Act 2022.

(2) This Act comes into operation on the day the Minister appoints by notice in the Gazette, and the Minister may appoint different days for different provisions or purposes.

**Interpretation.**

2.(1) In this Act (including the Schedules), unless the context otherwise requires—

“authorisation” means a licence, authorisation, approval or permission issued under this Act;

“Authority” means the Authority established under section 4;

“B2B Services” means the facilities or services specified in section 19(2)(i) to the provision of which section 17(1) applies.

“betting” means making or accepting a bet on—

- (a) the outcome of a race, competition or other event of any description;
- (b) the likelihood of anything occurring or not occurring; or
- (c) whether anything is or is not true,

but does not include any bet made or stake hazarded in the course of or incidental to any gaming and the expressions bet, betting and bookmaking shall be construed accordingly;

“betting agent” means a person who carries on, whether occasionally or regularly, the business of providing a service to select bets, or place bets using funds provided by other persons, whether in trust or other arrangement, or presented as an investment scheme or other commercial arrangement, and the expression “betting agency” shall be construed accordingly;

“betting intermediary” or “betting exchange” means a person who carries on, whether occasionally or regularly, the business of providing a service designed to facilitate the making or acceptance of bets between others but is not a party to any such bet and does not include a person who acts as servant or agent to another person who is a licence holder in respect of betting, and the expression “betting intermediation” shall be construed accordingly;

“betting machine” means a machine constructed or adapted to offer persons the opportunity to gamble by way of placing bets on the outcome of defined real events where the outcome cannot be known when the bet is offered, including but not limited to bets on sports events or other competitive events but not including games of chance;

“betting shop” means any premises opened, kept or used for purposes including betting other than gaming, including bets with a bookmaker or bets placed via a machine or other electronic means, by or with persons resorting thereto to bet;

“betting transaction” includes the placing or acceptance of bets or the collection or payment of winnings on a bet and any transaction in which one or more of the parties is acting as a bookmaker;

“bookmaker” means any person who—

- (a) whether on his own account or as servant or agent to any other person, carries on, whether occasionally or regularly, the business of receiving or negotiating bets or conducting pool betting operations; or
- (b) by way of business in any manner holds himself out, or permits himself to be held out, as a person who receives or negotiates bets or conducts such operations; and the expression “bookmaking” shall be construed accordingly;

“Commissioner” means the Commissioner appointed under section 6;

“Commissioner’s staff” has the meaning ascribed to it in section 10;

“comparable jurisdiction” means any jurisdiction outside Gibraltar which, in the opinion of the Authority, has established a system for the regulating of persons who conduct, manage or provide facilities for gambling that is comparable to that established under this Act;

“contravenes” in relation to any requirement of this Act includes any failure to comply with that requirement, and cognate expressions shall be construed accordingly;

“decision-maker” means the Authority or the Commissioner (as the case may be) who makes a decision under this Act;

“enforcement power” means any of the powers under Part 7 or Part 8;

“exempt person” means a person who is exempt from the general prohibition pursuant to regulations made under section 34;

“facilities for gambling” includes all articles, including electronic equipment used for the purpose of, or in connection with, the supply of any gambling services;

“financial crime” includes an offence involving–

- (a) money laundering,
- (b) the financing of terrorism,
- (c) fraud or dishonesty,
- (d) handling the proceeds of crime, or
- (e) proliferation

and for the purpose of this definition, (i) “offence” means an act or omission which is an indictable offence or would be an indictable offence if it had taken place in Gibraltar and (ii) “money laundering”, “the financing of terrorism” and “proliferation” shall have the same meaning as in the Proceeds of Crimes Act 2015;

“gambling” means–

- (a) betting (including pool betting) and bookmaking;
- (b) gaming;
- (c) lottery promotion;
- (d) any activity involving any form of prediction or gaming informed by chance or by skill or by both at a cost or potential cost to a participant, or prescribed by regulation as gambling;
- (e) operating or keeping on any premises a gambling machine for the purpose of gambling on those or any other premises,

but excludes social gambling.

“Gambling Appeals Tribunal” or “tribunal” means the gambling appeals tribunal established under section 145.

“gambling business” means–

- (a) an act, business or activity for which a licence is required under this Act; or
- (b) an act, business or activity that is prescribed by the Minister as a gambling business;

“gambling machine” means a gaming machine or a betting machine;

“gambling regulatory objectives” means the regulatory objectives relating to gambling specified in section 9;

“gambling services provider” mean a person who provides or offers to provide gambling services or facilities, or the opportunity to enter into gambling transactions to members of the public (“A”) regardless of whether A is in Gibraltar or elsewhere.

“gambling transaction” means a contract or transaction involving gambling;

“gaming or game of chance” includes–

- (a) a game that involves an element of chance and an element of skill; or
- (b) a game that involves an element of chance that can be eliminated by superlative skill; or
- (c) a game that is presented as involving an element of chance;

“gaming” means playing a game of chance for a prize;

“gaming establishment” means any premises opened, kept or used for purposes including gambling, including (but not limited to) gaming with gaming machines or other electronic means;

“gaming machine” means a machine constructed or adapted to offer persons the opportunity to gamble on games of chance, including but not limited to the appearance of moving reel games, casino games and animated character games, where the result of the games is predetermined or determined wholly or predominantly by chance;

“general prohibition” means the prohibition under section 26 to carry on a regulated activity without a licence or exemption;

“group” has the meaning given to it in section 81;

“Government Lottery” has the meaning given by section 21;

“licence holder” has the meaning given by section 32;

“licence” means an authorisation issued under Part 4 by the Authority, and shall include a licence agreement;

“licence agreement” means an agreement between the Authority and a licence holder regulating the licence or supplementing the provisions of this Act in relation to that licence;

“lottery” means any scheme for the distribution of prizes by chance or lot in which the participants make a contribution for the purposes of participation in the chances of the lottery and includes tombola, but does not include any gambling;

“lottery promotion” means promoting or otherwise engaging in the conduct, management or provision of a lottery or an occasional lottery, except a Government lottery;

“the Minister” means the Minister with responsibility for gambling;

“money” means all forms of cheques, bankers drafts, banknotes, currency notes, postal orders, money orders or negotiable instruments of any kind, whether or not transmitted or sent by electronic or other means, which represent a central bank currency;

“money’s worth” means any item, article, commitment or undertaking that represents money or may be acquired or exchanged for money, either directly or indirectly and includes crypto currencies of any kind;

“non-remote”, when applied in relation to any form of gambling, means gambling which is not remote gambling;

- “occasional lottery” means a lottery to which section 24 and Schedule 5 applies;
- “person” means a natural person or any entity with legal personality;
- “participant” means, in relation to any gambling transaction, a person who participates in the gambling transaction as a customer of a gambling services provider;
- “pool betting” means betting made on terms that all or part of any winnings—
- (a) shall be determined by reference to the aggregate of stakes paid or agreed to be paid by the persons betting,
  - (b) shall be divided among the winners;
- “prescribe” means prescribe by regulations made by the Minister, and prescribed shall be interpreted accordingly;
- “regulated activity” means a regulated activity within the meaning in section 16;
- “regulated individual” means a person who is a regulated individual for the purposes of Part V within the meaning in section 56.
- “regulatory requirement” has the meaning given to it in section 120;
- “registered participant” means a person who has registered as a customer with a licence holder who is authorised in respect of online gambling;
- “Relevant Company” means a company or other legal entity of any kind or any subsidiary thereof (“C”) which carries on the business of, or conducts, manages or provides facilities for, remote gambling in or from a place other than Gibraltar which, if done by C in or from Gibraltar would be a regulated activity;
- “remote gambling” means gambling in which persons participate by means of remote communication, that is to say, communication using—
- (a) the internet, or any other process that uses the internet,
  - (b) telephone,
  - (c) television,
  - (d) radio, or
  - (e) any other kind of electronic or other technology for facilitating communication,
- but shall not include—
- (i) the use of a telephone by a person who is a licence holder in respect of non-remote bookmaking, if the Authority has extended that licence to authorise the taking of bets by telephone; or
  - (ii) the use of any of the means of remote communication specified in the definition of “remote gambling” in section 2 by a person who is a licence holder in respect of non-remote lottery promotion, if the Authority has extended that licence to authorise the sale tickets or chances for a lottery by those remote communications.
- “remote gambling equipment” means electronic or other equipment used by or on behalf of a person providing facilities for remote gambling—
- (a) to register a person’s participation in the gambling or to process information relating thereto; or



- (b) to present, to persons who are participating or may participate in the gambling, a betting offer, a virtual game, virtual race or other virtual event or process by reference to which the gambling is conducted; or
  - (c) to determine all or part of, or the effect of, a result relevant to the gambling or to store information relating thereto; or
  - (d) to accept payment in respect of the gambling; or
  - (e) to authorise payment of any winnings in respect of the gambling,
- but does not include -

- (i) a computer which is used by a participant, unless it is provided by or on behalf of the person who is conducting or providing the facilities for the remote gambling; or
- (ii) equipment operated in the ordinary course of providing banking, publishing, telecommunications, payment processing services or such other services, unless that equipment or service is operated solely or predominantly to support remote gambling transactions or has been prescribed by the Authority to be remote gambling equipment;

“remote gambling licence” means a licence that authorises the holder in respect of remote gambling;

“sanctioning powers” means the powers under Part 8

“social gambling” means gambling which takes place on a social occasion in a residential hostel, private dwelling, workplace or welfare facility provided—

- (a) the gambling is not carried on or provided by way of a trade or business;
- (b) the participants consist wholly of persons who are residents in that residential hostel or private dwelling and their bona fide guests, or employees at that workplace or users of the welfare facility;
- (c) the gambling does not involve playing or staking against a bank; and
- (d) no charge of any description is made for entry or participation in the gaming other than the stakes hazarded by the participants.

“subsidiary” has the same meaning as in subsections 2 (1) and 2(4) of the Companies Act 2014,

“ticket” includes, in relation to any lottery or proposed lottery, any document or data evidencing the claim of a person to have acquired a chance in the lottery;

“the threshold conditions”, in relation to a regulated activity, has the meaning given in section 36(1).

“winnings” includes any kind of prize (whether or not in money or money’s worth) and any reference to the payment of winnings shall be construed accordingly.

## **Electronic communication.**

3.(1) A requirement imposed by or under this Act for a person to send or serve on another person (“the recipient”) any notice or other document may be satisfied by sending it to the recipient by electronic means if the recipient—

- (a) has notified the sender that the recipient is willing to receive notices or documents of that kind by that means; and
- (b) has not withdrawn that notification.

(2) A notification under subsection (1)(a) or withdrawal under subsection (1)(b) must be given in writing (which includes in electronic form).

(3) For the purposes of subsection (1), where the intended recipient is—

- (a) the Authority or the Commissioner, the Commissioner must publish on his website an email address to which the notice or document may be sent;
- (b) a person other than the Authority or the Commissioner, the recipient must provide the sender with the recipient’s email address.

(4) A notice or document sent by electronic means must be sent in a form that the sender reasonably considers will enable the recipient to—

- (a) read it, and
- (b) retain a copy of it.

(5) For the purposes of subsection (4), a notice or document can be read only if it can be read (or, to the extent that it consists of images, seen) with the naked eye.

## **PART 2**

### **THE AUTHORITY & THE COMMISSIONER**

#### **The Authority**

4. (1) The licensing authority for the purposes of this Act shall be the Minister or such other individual or body as the Minister may appoint by notice in the Gazette.

(2) In the exercise of his functions under this Act the Authority shall have regard to the general policy of the Government in relation to the carrying on in or from Gibraltar of gambling (whether generally or of a particular description) and related activities and shall comply with any general directions given by the Government pursuant to that policy.

(3). Nothing in subsection (2) shall be construed as authorising the Government to give any direction in respect of a particular application for a licence or any direction that inhibits the Authority from determining any application for a licence fairly.

### **Functions of the Authority**

5. (1) The functions of the Authority are—

- (a) to consider and determine applications for a licence under Part 4 of this Act;
- (b) to carry out the duties and discharge the functions imposed on, or given to, it under this or any other Act.

### **The Commissioner and the Gambling Division**

6. (1) There shall be a Commissioner, who shall have the functions, powers and responsibilities specified in this or any other Act.

(2) The Commissioner shall be such person as the Minister shall appoint by notice in the Gazette.

(3) An appointment under subsection (2) shall be on such terms and conditions, and for such period of time, as the Minister considers appropriate.

### **Functions of the Commissioner.**

7. (1) The functions of the Commissioner are—

- (a) to advise and assist the Authority in relation to the discharge by the Authority of his functions and powers under this Act;
- (b) to supervise and regulate licence holders in accordance with this Act;
- (c) to monitor compliance by licence holders and regulated individuals with this Act and any regulations, rules, codes and guidance made under it and, when appropriate, take enforcement action in respect of any non-compliance;
- (d) to monitor compliance by licence holders with any licence issued under this Act and, when appropriate, take enforcement action in respect of any non-compliance;
- (e) to monitor compliance by licence holders and regulated individuals with legislation, rules, codes and guidance relating to the prevention of financial crime and, when appropriate, take enforcement action in respect of any non-compliance;
- (f) to take such appropriate action, including (but not limited to) by the exercise of sanctioning powers and enforcement powers under this Act, as he is empowered to take under this Act against a licence holder or regulated individual who is or may be in default of a requirement or provision of this Act or a licence .
- (g) to monitor gambling business carried on in or from Gibraltar and to take such appropriate action as he is empowered to take against persons carrying on such business or carrying on a regulated function without the necessary licence or approval, as the case may be;
- (h) to carry out the duties and discharge the functions imposed on, or given to, him under this or any other Act;
- (i) to advise the Minister if, at any time, he considers that this Act does not provide him with sufficient powers, or otherwise does not enable him, or he does not have such financial, technical and other resources, and such personnel, as are necessary to enable him–
  - (i) to supervise and regulate gambling business carried on in or from Gibraltar to internationally accepted standards; or
  - (ii) to discharge his functions under this or any other Act.
- (j) To advise and assist the Minister in respect of matters relating to gambling.

**Commissioner’s discharge of his functions.**

8. In discharging his functions under this or any other Act, the Commissioner–

- (a) must, so far as reasonably possible, act in a way–
  - (i) which is compatible with the gambling regulatory objectives, and
  - (ii) which the Commissioner considers most appropriate for the purposes of meeting the gambling regulatory objectives; and

- (b) must have regard to–
- (i) the need to use resources in the most efficient and effective way;
  - (ii) the principle that the duty to manage a business falls on the senior management of that business;
  - (iii) the principle that a burden or restriction which is imposed on a person, or on the carrying on of an activity, should be proportionate to the benefits, considered in general terms, which are expected to result from the imposition of that burden or restriction;
  - (iv) the international character of remote gambling and related markets and the desirability of maintaining the competitive position of Gibraltar;
  - (v) the promotion of the macro-economic interests of Gibraltar and, in particular, the development of gambling business, in accordance with the policies of the Government as advised to the Commissioner by the Minister; and
  - (vi) the need to maintain the good international reputation of Gibraltar generally and as a jurisdiction for the conduct of gambling business.

### **Gambling regulatory objectives**

9. The gambling regulatory objectives are –

- (a) the preservation of confidence in gambling markets;
- (b) the protection of consumers, especially children, young persons and problem gamblers;
- (c) the promotion of fair and responsible gambling;
- (d) preventing gambling being a source of crime, being associated with crime or being used to support or proliferate financial crime;
- (e) the public interest of Gibraltar including (but not limited to) its reputation and macro-economic interests,

as more specifically described in Schedule 1.

### *Staff and delegation of functions*

10. (1) In discharging his functions under this or any other Act, the Commissioner—
- (a) shall be assisted and supported by such staff as the Minister may assign to him for that purpose (“Commissioner’s staff”); and
  - (b) may arrange for any person to exercise any function of the Commissioner other than a function under this subsection or an enforcement power.
- (2) Any act done or omitted to be done by a person exercising a function delegated under this section is taken to have been done or omitted to have been done by the Commissioner.
- (3) The office of the Gambling Commission and the Commissioner’s staff shall be known as the Gambling Division.

### *Powers of Minister*

#### **Default powers of the Minister.**

11.(1) If at any time it appears to the Minister that the Commissioner has failed to comply with any provision made by or under this or any other Act, the Minister may, by written notice direct the Commissioner to make good the default within the time specified in the notice.

(2) If the Commissioner fails to comply with a direction under subsection (1), for the purpose of giving effect to the direction the Minister may exercise any power of the Commissioner or do any act or other thing authorised to be done by the Commissioner.

(3) The Minister’s powers under subsections (1) and (2) may be exercised by a person appointed in writing by the Minister for that purpose.

#### **Deregistration of Part XII companies.**

12. The Minister may, at the request of the Commissioner, direct the Registrar of Companies to deregister a company registered under Part XII of the Companies Act 2014 if—

- (a) it appears to the Commissioner that the company is carrying on, or has carried on, gambling business without the necessary licence ;
- (b) the Authority is entitled to cancel or suspend the licence of the company under this Act; or
- (c) the company has had its licence cancelled or suspended under this Act.

*Rules, codes and guidance*

**Rules, Codes of Practice and Guidance.**

13.(1) The Commissioner may, with the consent of the Minister, make rules in respect of anything required or permitted to be prescribed by this Act.

(2) The Commissioner may issue guidance and codes of practice consisting of such information and advice as he considers appropriate—

- (a) with respect to the operation of this Act;
- (b) with respect to any matters relating to functions of the Commissioner;
- (c) for the purpose of meeting the gambling regulatory objectives ; and
- (d) with respect to any other matters about which it appears to the Commissioner to be desirable to give information or advice.

(3) The Commissioner must make and maintain effective arrangements for consulting licence holders prior to making rules or issuing guidance or codes of practice under this section.

(4) The Commissioner must provide the Minister with notice of his intention to make rules or issue guidance or codes of practice under this section, or to revoke or amend rules, guidance or codes of practice already made.

(5) The period of notice to be provided under subsection (4) is –

- (a) not less than 28 days prior to the date that the rules, guidance or codes of practice take effect; or
- (b) such shorter period as the Minister may agree to accept.

(6) The Minister may, during the period specified under subsection (5)(a), require the Commissioner to do the following -

- (a) not to issue the intended rules, guidance or codes of practice,
- (b) not to revoke or amend the existing rules, guidance or codes of practice in the manner proposed, or
- (c) to issue the intended rules, guidance or codes of practice, revocation or amendment in a manner prescribed by the Minister.

(7) Rules, guidance or codes of practice made under this section may make different provision for different persons, circumstances or cases.

(8) Licence holders shall comply with any rules, guidance or codes of practice made under this section and any breach thereof may be used by the Authority or Commissioner (as the case may be) as grounds for such action as permitted by the Act to which it relates.

(9) The Minister may require the Commissioner to revoke or to amend in the manner specified by the Minister any rules, guidance or codes of practice made under this section and if the Commissioner does not do so within a period of 30 days, the Minister may revoke or amend those rules or that guidance or code of practice.

(10) Without prejudice to the generality of the foregoing, rules, guidance or codes of practice may relate to–

- (a) Safeguarding and integrity of equipment including (but not limited to)–
  - (i) the secure location and protection of remote gambling equipment, data and communications;
  - (ii) the testing of gambling equipment including electronic and mechanical equipment and software; and



- (iii) the reporting to the Commissioner of the technical infrastructure of the operator and of any material changes to the infrastructure.
- (b) Requirements for responsible gambling and the protection of vulnerable consumers;
- (c) Making financial or other contributions to research into and provision of measures to prevent or treat problem gambling;
- (d) Requirements for customer registration;
- (e) The management of customer funds held by licence holders or on their behalf;
- (f) Matters relating to compliance with the requirements of the Proceeds of Crimes Act or any other law whose objective is to combat financial crime;
- (g) The marketing, advertising or any other promotion of gambling to consumers or potential consumers by or on behalf of licence holders;
- (h) The fair and proper resolution of customer complaints.

(11) Rules, guidance or codes of practice made or issued under this section may be complementary to and do not supersede any other legal obligation imposed on a licence holder by way of a licence issued by a comparable jurisdiction or with regard to a particular class of consumer.

#### *Register of licence holders*

#### **The Register.**

14.(1) The Commissioner must establish and maintain a register of licence holders.

(2) The Commissioner must keep the register—

- (a) in writing (which may be in electronic form);
- (b) correct and up to date; and

(c) securely, in a manner which guards against falsification.

(3) The Commissioner may publish the register in such manner as he considers appropriate.

(4) The Minister may by regulations make such provision in connection with the register as the Minister considers appropriate.

(5) Regulations under subsection (4) may, in particular, provide for—

(a) the form and keeping of the register;

(b) the procedure for making, altering and removing entries in the register; or

(c) the information which may be included in any version of the register published under subsection (3).

### **PART 3**

#### **REGULATED AND PROHIBITED ACTIVITIES**

##### *Introduction*

##### **Overview.**

15. This Part makes provision prohibiting any person from carrying on regulated activities in or from Gibraltar unless the person is either a licence holder or an exempt person.

##### *Regulated activities*

##### **Regulated activities and Minister's power to modify.**

16.(1) An activity is a regulated activity for the purposes of this Act if—

(a) it is an activity of a kind specified in Section 17; and

(b) it is carried on in or from Gibraltar.

(2) The Minister may by regulations amend section 17 by adding, modifying or removing provisions.

(3) Regulations under subsection (2) may—

(a) provide for exclusions from the regulated activities;

(b) confer powers on the Minister, the Authority or the Commissioner;

(c) authorise the making of regulations or other instruments by the Minister for the purposes of, or connected with, any provision of, or made under, this section;

(d) make such consequential, transitional or supplemental provision as the Minister considers appropriate for the purposes of, or connected with, any provision of, or made under, this section.

(4) Provision made as a result of subsection (3)(d) may amend any enactment, including any provision of, or made under, this Act.

17. (1) The following are regulated activities for the purposes of this Act –

(i) Carrying on the business of remote gambling, or conducting, managing or providing facilities for remote gambling with, to or for members of the public (“A”) where A enters into a gambling transaction regardless of whether A is in Gibraltar or elsewhere (“B2C remote gambling”).

(ii) Carrying on the business of remote gambling, or conducting, managing or providing facilities for remote gambling with, to or for:

(a) a licence holder ; or

(b) a person or entity (“X”) who conducts, manages or provides facilities for remote gambling in or from a place other than Gibraltar which, if done by X in or from Gibraltar would be a regulated activity.

(“B2B remote gambling”).

- (iii) Carrying on the business of, or conducting, managing or providing non-remote gambling in or from Gibraltar (“B2C non-remote gambling”).
- (iv) Distributing, supplying, selling, leasing or servicing gambling machines (“B2B non-remote gambling”)
- (v) Acting as or carrying on the business of, or conducting, managing or providing facilities for carrying on the business of-
  - (a) a betting exchange or betting intermediary
  - (b) a betting agent.
- (vi) The following activities –
  - (a) Conducting, managing or providing advertising or marketing services for gambling wherever in the world the gambling takes place, except exempt advertising or marketing; or
  - (b) A person or a partnership or a trust (as the case may be) which is incorporated, registered, or has a place of business in, or is managed or controlled in or from Gibraltar or is subject to the laws and/or jurisdiction of the courts of Gibraltar in respect of its general affairs or constitution from, being directly or indirectly the holding company for, or legally or beneficially owning shares in a Relevant Company; or
  - (c) Holding or managing customer funds in connection with remote gambling (save in the case of a licensed credit institution); or
  - (d) Such other activities as the Minister shall prescribe.

(2) Subsection 17(1)(vi) shall not apply when the activity is conducted or the facility is provided by A to B, when B is a licence holder and A is a member of the same Group as B, or when B provides those facilities to itself.

(3) Subsection (2) shall not apply to the activity to which subsection 17(1)(vi)(b) relates (holding company etc of a Relevant Company).

(4) The Minister may by regulation amend subsection (1) by-

- (i). adding or removing an activity; or
- (ii) modifying the description of an activity.

(5) A licence in respect of the regulated activities referred to in sections 17(1)(i), 17(1)(iii) and 17(1)(v) shall be known as a B2C Gambling Operator's licence.

(6) A licence in respect of the regulated activities referred to in section 17(1)(ii) and 17(1)(iv) shall be known as a B2B Gambling Operator's licence.

(7) A licence in respect of the regulated activities referred to in section 17(1)(vi) shall be known as a Gambling Operator Support Services licence.

18. In subsection 17(1)(vi)(a) exempt advertising or marketing means advertising or marketing carried out on behalf of a licence holder by a person or entity that carries on, and holds himself out as carrying on, to or for the public at large, the business of advertising or marketing.

### *Remote gambling*

#### **Carrying on, conducting etc and providing facilities for remote gambling**

19 (1) For the purposes of this Act, a person shall be regarded as carrying on the business of, conducting, managing or providing facilities for, remote gambling in or from Gibraltar if:

- (a) at least one piece of remote gambling equipment used in the carrying on the business of, conducting, managing or provision of the facilities for, remote gambling is situated in Gibraltar; or
- (b) that person, in or from Gibraltar, carries on or conducts, or is responsible for the organisation, authorisation or production of remote gambling regardless of whether the gambling takes place in Gibraltar or elsewhere; or
- (c) that person, in or from Gibraltar, conducts or is responsible for the organisation, or operation or any other form of management of remote gambling equipment located anywhere in the world; or
- (d) that person, in or from Gibraltar, enters into, offers to enter into or holds out as able or willing to enter into a gambling transaction, whether remotely or non-remotely, regardless of whether the gambling is to take place in Gibraltar or elsewhere.
- (e) That person, in or from Gibraltar, provides one or more of the services specified in subsection (2)(i) of this section to a licence holder, subject to the other provisions of that subsection.

(2) For the purposes of subsection 17(1)(ii) (B2B remote gambling):

- (i) providing facilities for remote gambling includes providing-
  - (l) content aggregation services or facilities;
  - (m) server-based content software;
  - (n) live gaming content, services or facilities;
  - (o) hosting of supplied content software where a B2B software supplier hosts its own proprietary content on a proprietary platform;
  - (p) other platform services used for the delivery of gaming or betting software or content;
  - (q) real event betting data, including odds;
  - (r) managed trading services;
  - (s) virtual or simulated content for the purposes of betting;
  - (t) other betting, gaming or lottery software;
  - (u) one or more of the following services in connection with gambling when the exercise of those functions as a whole have been substantially contracted out by a licence holder to the person providing the services–

- i. Fraud prevention and or risk management services ;
  - ii. Customer due diligence assessment or compliance;
  - iii. Customer identification verification services; and
  - iv. Customer relationship management services; and
- (v) such other services or facilities as may be prescribed by the Minister.

### *B2B Services*

#### **B2B Services**

20. (1) On receipt of a request from the Commissioner asking for information concerning B2B Services provided or to be provided to it, a licence holder shall give the Commissioner in such form and manner as may be specified in the request, the following information in relation to the B2B Services to which the request relates—

- (a) the person who supplies or is to supply the B2B Services;
- (b) the specifications of the B2B Services; and
- (c) such other information in relation to the B2B Services or the person who supplies or is to supply it as the Commissioner may request.

(2) If the Commissioner is not satisfied with the information provided by a licence holder in pursuance of subsection (1), the Commissioner may by notice in writing prohibit the licence holder from contracting the use of, or continuing to use the B2B Services and/or the supplier to which the notice relates.

### *Lotteries*

#### **Power to promote and conduct Government Lotteries**

21.(1) Subject to the provisions of and of any regulations made under this Act, it shall be lawful for the Government to promote and conduct a lottery and a lottery so promoted and conducted is in this Act referred to as a "Government Lottery".

(2) A Government Lottery may be:

- (i) drawn and conducted remotely or non-remotely,
- (ii) conducted by the Government itself or by another person on its behalf

as the Minister may prescribe.

(3) In relation to a Government Lottery, the Minister shall have power to do all such acts and things, prescribe all such matters and give all such directions as he may consider necessary or expedient for that purpose and, without prejudice to the generality of this power, the Minister may, in particular –

- (a) prescribe the number and price of the tickets or chances to be issued for any such lottery;
- (b) the frequency and methods by which the lottery is offered and administered.
- (c) appoint and remunerate agents for the sale of those tickets or chances;
- (e) prescribe the number and value of the prizes to be distributed to the winners;
- (d) prescribe the time when, the place where and the manner in which any draw shall take place to determine the winners.

(3) If, at any time during the drawing or conduct of any Government Lottery, any question or dispute should arise concerning the winning number or numbers, the method of drawing or conduct or any other matter :

- (i) the draw, if being held non-remotely, shall be suspended and the matter referred to the [Minister who will advise and, if necessary, adjudicate on the matter; and



- (ii) if the lottery is being conducted remotely, the matter shall be referred to the Minister prior to the next conduct of the lottery who will advise and, if necessary, adjudicate on the matter.

### **Proceeds of Government Lotteries**

22. Subject to the deduction of any prize money properly payable to the winners and of such

other deductions as may be prescribed, the proceeds of the sale of all tickets or chances in any Government lottery shall be paid into the Consolidated Fund.

### **General regulations about Government Lotteries**

23.(1) The Minister may make regulations prescribing all matters which are necessary or convenient to be prescribed for giving effect to the preceding provisions of this Part and in particular—

- (a) for designating a public officer to be responsible for the operation of Government lotteries;
- (b) for appointing a committee to advise and assist in the promotion and conduct of Government lotteries;
- (c) for prescribing the conditions to be observed by agents appointed to sell chances for Government lotteries;
- (d) for prescribing the form or contents for recording the sale of such chances;
- (e) for prescribing the information to be published concerning any Government lottery and the manner in which it shall be published;
- (f) for prescribing the frequency, method and arrangements by which lottery chances are offered for sale;
- (g) for prescribing the time within which and the manner in which prizes shall be claimed;
- (h) for providing for the disposal of unclaimed prizes or money as to which any dispute has arisen;

(i) for prescribing the method used and the persons who shall be present at any draw for the allotment of prizes and their powers and duties in relation to any such draw or to any dispute or difficulty which may arise in the conduct of any such draw.

(2) Regulations made under this section may prescribe that, in certain eventualities to be

specified and after such time as may be specified, the proceeds of unclaimed prizes shall be forfeited to the Government and paid into the Consolidated Fund.

### **Occasional lotteries**

24.(1) Schedule 5 shall have effect with respect to occasional lotteries subject to temporary licencing .

(2) On receipt of an application in the prescribed form accompanied by any prescribed fee, the Authority may licence the applicant to promote and conduct a lottery of a description specified in Schedule 5 subject to the relevant conditions and any additional terms imposed by the Authority.

(3) A person who promotes or conducts a lottery of a description specified in Schedule 5 shall be guilty of an offence unless.

(a) he is licensed to do so under subsection (2); and

(b) the terms and conditions specified in that licence are complied with.

(4) The Authority may by order published in the Gazette add to or otherwise amend Schedule 5.

### **References to regulated activities of a particular kind.**

25.(1) Any reference in this Act to the carrying on of a regulated activity of a particular kind is to be understood in accordance with section 17.

### *Carrying on regulated activities*

#### **The general prohibition.**

26.(1) No person may carry on a regulated activity in or from Gibraltar, or purport or hold themselves out as able to do so, unless the person is in respect of that regulated activity—

- (a) a licence holder ; or
- (b) an exempt person.

(2) The prohibition in subsection (1) is referred to in this Act as the general prohibition.

(3) For the purposes of subsection (1) it is irrelevant where the person with whom the regulated activity is carried on is situated.

(4) The general prohibition does not apply to any gambling which takes place between 6pm on one day and 6am the following day on a cruise ship moored at or within the port of Gibraltar if—

- (a) the participants consist wholly of persons who are passengers or crew on that ship;
- (b) the ship is expected to depart from Gibraltar within 12 hours of the commencement of gambling and not to return within the following 24 hours; and
- (c) the gaming is of a kind normally available on that ship.

#### **Contravention of the general prohibition.**

27.(1) A person who contravenes the general prohibition commits an offence and is liable—

- (a) on summary conviction, to imprisonment for six months or the statutory maximum fine, or both;
- (b) on conviction on indictment, to imprisonment for two years or a fine, or both.

(2) It is a defence for a person charged with an offence under subsection (1) to prove that the person took all reasonable precautions and exercised all due diligence to avoid committing the offence.

**False claims to be licensed or exempt.**

28.(1) It is an offence for a person (“P”) who is neither a licence holder nor, in relation to the regulated activity in question, an exempt person—

- (a) to describe P (in whatever terms) as being a licence holder in relation to the regulated activity;
- (b) to describe P (in whatever terms) as being an exempt person in relation to the regulated activity; or
- (c) to behave or otherwise hold P out in a manner which indicates (or which is reasonably likely to be understood as indicating) that P is—
  - (i) a licence holder ; or
  - (ii) an exempt person,  
in relation to the regulated activity.

(2) A person who commits an offence under subsection (1) is liable—

- (a) on summary conviction, to imprisonment for six months or the statutory maximum fine, or both;
- (b) on conviction on indictment, to imprisonment for two years or a fine, or both.

(3) It is a defence for a person charged with an offence under subsection (1) to prove that the person took all reasonable precautions and exercised all due diligence to avoid committing the offence.

**Licence holder acting in breach of licence.**

29 .(1) A licence holder (“LH”) is to be taken to have contravened a requirement imposed on LH by or under this Act if LH carries on a regulated activity in or from Gibraltar, otherwise than in accordance with the terms of a licence given to LH in respect of that regulated activity under Part 4 including any licence agreement;

(2) A contravention within subsection (1)–

- (a) does not make LH guilty of an offence provided LH holds a licence in respect of the regulated activity in question; and
- (b) does not make any transaction void or unenforceable.

### *Miscellaneous*

#### **Carrying on regulated activities in or from Gibraltar.**

30.(1) In the three cases described in this section, a person (“A”) who is carrying on a regulated activity but would not otherwise be regarded as carrying it on in or from Gibraltar is, for the purposes of this Act, to be regarded as carrying it on in or from Gibraltar.

(2) The first case is where A’s registered office or head office is not in Gibraltar but -

- (a) the day-to-day management of the carrying on of the regulated activity is the responsibility of another establishment maintained by A in Gibraltar; or
- (b) the regulated activity is carried on from an establishment maintained by A in Gibraltar.

(3) The second case is where–

- (a) A’s registered office is in Gibraltar or, if A does not have a registered office, A’s head office is in Gibraltar; and
- (b) the activity is carried on from an establishment maintained in a country or territory outside Gibraltar.

(4) For the purposes of subsections (2) and (3) it is irrelevant where the person with whom the regulated activity is carried on is situated.

(5) The third case is where A is, from a place other than Gibraltar, is providing facilities for remote gambling to or for the benefit of a licence holder.

(6) Subsection (5) shall not apply where the facilities :

- (i). are provided to the licence holder by a company that is a member of the group of companies of which the licence holder forms part;
- (ii). are not critical to the remote gambling in the sense that the remote gambling in question could be lawfully carried on without that facility or a similar facility; or
- (iii). where A is providing content software to a licence holder of a B2B Gambling Operator's Licence that authorises the holder to provide content aggregation services or facilities.

## **PART 4**

### **LICENSING AND EXEMPTION**

#### *Introduction*

#### **Overview.**

#### **31. This Part–**

- (a) lists the kinds of licensed holders and who can apply for a licence;
- (b) makes provisions for the types of licence, the consideration and determination of applications for and grants of licences;
- (c) makes provisions for and prescribes powers for the variation or cancellation of licences, and the imposition of requirements on licence holders;
- (d) makes provisions for applicable procedures, including in urgent cases; and
- (e) confers power to prescribe the persons who are exempt from the general prohibition.

#### *Licensing*

## **Licence holders .**

32. A person is licensed for the purposes of this Act if he is a person to which the Authority has given a licence under this Part 4 to carry on one or more regulated activities (referred to in this Act as “a licence holder”).

## **Partnerships and unincorporated associations.**

33.(1) In this section, “entity” means–

- (a) a partnership (including any form of limited partnership); or
- (b) an unincorporated association of persons.

(2) If an entity is licensed –

- (a) it is licensed to carry on the regulated activities concerned in the name of the entity;  
and
- (b) save as in this Act otherwise provided, its licence is not affected by any change in membership.

(3) If an entity which is licensed is dissolved, its licence continues to have effect in relation to any individual or entity which succeeds to the business of the dissolved entity.

(4) For the purposes of this section, an individual or entity is to be regarded as succeeding to the business of a dissolved entity only if succession is to the whole or substantially the whole of the business of the former entity.

## *Exemptions*

### **Exemption Regulations.**

34 .(1) The Minister may by regulations (“Exemption Regulations”) specify circumstances in which a person is exempt from the general prohibition.

(2) Exemption Regulations may, in particular–

- (a) provide for specified persons, or persons falling within a specified class, to be exempt from the general prohibition; or
- (b) exempt a person (“P”) who carries on a regulated activity on behalf of a licence holder who accepts full and unconditional responsibility for any act or omission of P when acting on the licence holder’s behalf.

(3) But a person cannot be an exempt person as a result of Exemption Regulations if the person has a licence under this Part 4.

(4) Exemption Regulations may–

- (a) provide for an exemption to have effect–
  - (i) in respect of all regulated activities;
  - (ii) in respect of one or more regulated activities;
  - (iii) only in specified circumstances;
  - (iv) only in relation to specified functions; or
  - (v) subject to specified conditions (including a person being entered on a specified register);
- (b) make provision as to the powers, duties, rights and liabilities of–
  - (i) any exempt person; or
  - (ii) any person who accepts responsibility for an exempt person;
- (c) apply to exempt persons (with or without modifications) any provision of, or made under, this Act; or
- (d) confer functions on the Authority and or the Commissioner.



(5) “Specified” means specified by the Exemption Regulations.

*Initial applications for licence to carry on a regulated activity*

**Persons who can apply for licence .**

35.(1) This Act applies to any person which is–

- (a) an individual;
- (b) a body corporate;
- (c) a partnership (including any form of limited partnership); or
- (d) an unincorporated association.

(2) A person within subsection (1) may make an application to the Authority for a licence under this Part 4 to carry on one or more regulated activities.

(3) The Minister may make regulations which provide–

- (a) that only such kinds of persons within subsection (1) as may be specified in the regulations may apply for a licence to carry on particular regulated activities;  
and
- (b) that an application for a licence to carry on a regulated activity of a specified kind may not include an application for a licence to carry on any other kind of regulated activity.

**Meaning of “the threshold conditions”.**

36.(1) In this Act, “the threshold conditions”, in relation to a regulated activity, means the conditions set out in or specified under Schedule 2, as supplemented by regulations under subsection (3).

(2) The Minister may by regulations amend Schedule 2 by adding, modifying or removing provisions, or by substituting for provisions contained in Schedule 2 as they have effect for the time being provisions specified in the regulations.

(3) The Minister may make regulations—

- (a) supplementing any of the conditions for the time being set out in or specified under Schedule 2; or
- (b) in relation to particular regulated activities, disapplying one or more of those conditions or applying them with modifications.

(4) Different provision may be made under this section in relation to different regulated activities.

#### **Giving a licence .**

37.(1) “The applicant” means an applicant under section 35 for a licence under this Part 4 .

(2) The Authority may give a licence for the applicant to carry on the regulated activity or activities to which the application relates or such of them as may be specified in the licence.

(3) If the Authority gives a licence, the Authority must specify the permitted regulated activities or activity, described in such manner as the Authority considers appropriate.

(4) The Authority may—

- (a) incorporate in the description of a regulated activity such limitations (for example as to the circumstances in which the activity may, or may not, be carried on) as he considers appropriate;
- (b) specify a narrower or wider description of regulated activity than that to which the application relates; or
- (c) give a licence for the carrying on of a regulated activity which is not included among those to which the application relates.

(5) If an applicant–

- (a) in relation to a particular regulated activity, is an exempt person; but
- (b) has applied for a licence in relation to another regulated activity,

the application is to be treated as relating to all the regulated activities which, if a licence is given, the applicant will carry on.

#### *Types of licence*

38.(1) This section describes the types of licences that the Authority may give in respect of regulated activities.

(2) A licence may authorise –

- (i) one or more regulated activities;
- (ii) one or more activities that constitute gambling.

(3) A licence may authorise –

- (i) remote gambling; or
- (ii) non-remote gambling,

but not both.

(4) A B2C Gambling Operator's licence and a B2B Gambling Operator's licence shall authorise the advertising and marketing services of the gambling services to which the licence relates.

*Considerations on giving or varying a licence or imposing or varying a requirement*

39.(1) In giving or varying a licence or imposing or varying a requirement under this Part, the Authority must be satisfied that the applicant or licence holder (as the case may be) concerned:

- (a) will satisfy, and continue to satisfy, or (as the case may be) is satisfying the threshold conditions in relation to all of the regulated activities for which the licence holder has or will have permission; and
- (b) will have, and continue to maintain, or (as the case may be) has a sufficient substantive presence in Gibraltar.

(2) But the duty imposed by subsection (1)(a) does not prevent the Authority, having due regard to that duty, from taking in relation to a particular licence holder the steps that it considers—

- (a) are necessary in order to avoid or reduce significant risk to any of the regulatory objectives; and
- (b) would be reasonable and proportionate having regard to all the circumstances.

*Sufficient substantive presence*

40.(1) In considering whether (as the case may be) the applicant or the licence holder has or will have a sufficient substantive presence in Gibraltar for the purposes of subsection 39(1)(b) the Authority shall have regard to all or any (in such combination and measure as he shall think appropriate in his discretion) of the following matters-

- (a) The nature, extent, purpose and usage of the remote gambling equipment located or to be located and maintained in Gibraltar;
- (b) The number and nature of jobs to be created and maintained in Gibraltar;
- (c) The amount of tax revenue that will accrue or is accruing to the Government; and
- (d) Such other factors as appear to the Authority to constitute a sufficient substantive presence in Gibraltar.

(2) The Minister may by regulations modify, add or remove matters in subsection (1).

#### *Variation and cancellation of licence*

#### **Variation or cancellation at request of a licence holder.**

41.(1) The Authority may, on the application of a licence holder, and having regard to section 39(1), vary the licence holder's licence under this Part by-

- (a) adding a regulated activity to those to which the licence relates;
- (b) removing a regulated activity from those to which the licence relates; or
- (c) varying the description of a regulated activity to which the licence relates.
- (d) adding, removing or varying any requirement, agreement or commitment relating to any matter under section 40 relevant to substantive presence in Gibraltar for the purposes of section 39(1).

(2) The Authority may, on the application of the licence holder, cancel the licence.

(3) The Authority may refuse an application under this section if it appears to it that refusing the application-

(a) is necessary in order to avoid or reduce significant risk to any of the regulatory objectives; and

(b) would be reasonable and proportionate having regard to all the circumstances.

(4) If, as a result of a variation under this section of a licence holder's licence there are no longer any regulated activities for which the licence holder has a licence, the Authority must, once it is satisfied that it is no longer necessary to keep the licence in force, cancel it.

(5) The Authority's power under this section to vary a licence extends to including in the licence as varied any provision that could be included if a fresh licence were being given by it in response to an application under sub section 35(2).

#### **Variation or cancellation on initiative of Authority.**

42.(1) The Authority may exercise its power under this section in relation to a licence holder if it appears to the Authority –

(a) that the licence holder is failing, or is likely to fail, to satisfy any of the threshold conditions;

(b) that the licence holder is failing or is likely to fail to maintain a sufficient substantive presence in Gibraltar in accordance with section 40;

(c) that the licence holder has failed, during a period of at least 12 months, to carry on a regulated activity to which its licence under this Part relates;

(d) that exercising the power–

(i) is necessary in order to avoid or reduce significant risk to any of the regulatory objectives; and

- (ii) would be reasonable and proportionate having regard to all the circumstances.

(2) The Authority's power under this section is the power—

(a) to vary the licence holder's licence by—

(i) adding a regulated activity to those to which the licence relates; or

(ii) removing a regulated activity from those to which the licence relates; or

(iii) varying the description of a regulated activity to which the licence relates;  
or

(iv) adding, removing or varying any requirement, agreement or commitment relating to the any matter under section 40 relevant to substantive presence in Gibraltar for the purposes of section 39(1); or

(b) to cancel the licence.

(3) If, as a result of a variation under this section of a licence holder's licence, there are no longer any regulated activities for which the licence holder has licence, the Authority must, once it is satisfied that it is no longer necessary to keep the licence in force, cancel it.

(4) The Authority's power under this section to vary a licence extends to including in the licence as varied any provision that could be included if a fresh licence were being given in response to an application under section 35(2) .

#### *Imposition and variation of requirements*

#### **Imposition of requirements by the Commissioner.**

43.(1) Where a licence holder has a licence under this Part, the Commissioner may, with the prior consent of the Authority, impose on that licence holder such requirements as the Commissioner considers necessary or desirable.

(2) The Commissioner may exercise his power under subsection (1) in relation to a licence holder if it appears to the Commissioner –

- (a) that the licence holder is failing, or is likely to fail, to satisfy the threshold conditions;
- (b) that the licence holder is failing or is likely to fail to maintain a sufficient substantive presence in Gibraltar in accordance with section 40;
- (a) that the licence holder has failed, during a period of at least 12 months, to carry on a regulated activity to which the licence under this Part relates; or
- (c) that exercising the power–
  - (i) is necessary in order to avoid or reduce significant risk to any of the regulatory objectives; and
  - (ii) would be reasonable and proportionate having regard to all the circumstances.

(3) The Commissioner's power under this subsection is a power–

- (a) to impose a new requirement;
- (b) to vary a requirement imposed by the Commissioner under this section; or
- (c) to cancel such a requirement.

(4) The Commissioner may, on the application of a licence holder–

- (a) impose a new requirement;



- (b) vary a requirement imposed by the Commissioner under this section; or
- (c) cancel such a requirement.

(5) The Commissioner may refuse an application under subsection (4) if it appears to him that refusing the application—

- (a) is necessary in order to avoid or reduce significant risk to any of the regulatory objectives; and
- (b) would be reasonable and proportionate having regard to all the circumstances.

(6) The Authority may in writing waive (“waiver”) the need for the Commissioner to obtain the Authority’s consent under subsection (1) in respect of cases or requirements specified or identified, specifically or by category in the waiver, provided that:

- (a) any requirement imposed or varied by the Commissioner without the prior consent of the Authority in reliance on a waiver shall be removed or varied by the Commissioner as may be required by the Authority; and
- (b) any waiver may be withdrawn by the Authority at any time provided that any such withdrawal shall not affect the validity of any act of the Commissioner done without the Authority’s consent in reliance on a waiver prior to the communication to him of the withdrawal of the waiver.

(7) The Authority may require the Commissioner to impose a requirement on a licence holder under this section or to cancel or vary a requirement previously imposed on the licence holder and if the Commissioner does not do so within 14 days the Authority may itself impose, vary or cancel the requirement.

**Requirements under section 43: further provisions.**

44.(1) In this section “requirement” means a requirement imposed under section 43.

(2) A requirement may, in particular, be imposed—

- (a) so as to require the licence holder concerned to take specified action; or
- (b) so as to require the licence holder concerned to refrain from taking specified action.

(3) A requirement may extend to activities which are not regulated activities.

(4) A requirement may be imposed by reference to a licence holder's relationship with—

- (a) the licence holder's group; or
- (b) other members of the licence holder's group.

(5) A requirement may be expressed to expire at the end of such period as the Commissioner may specify, but the imposition of a requirement that expires at the end of a specified period does not affect the Commissioner's power to impose a new requirement.

(6) A requirement may refer to the past conduct of the licence holder concerned (for example, by requiring the licence holder to review or take remedial action in respect of past conduct).

(7) No requirement may be imposed to require anything which can be done by an asset protection order made by the Supreme Court under section 45.

**Application to the Supreme Court: asset protection orders.**

45.(1) The Commissioner may apply to the Supreme Court for an asset protection order in relation to a licence holder if it appears to the Commissioner that any ground specified in section 43(2)(a) to (c) is satisfied in relation to a licence holder.

(2) An “asset protection order” means an order–

- (a) to prohibit the disposal of, or other dealing with, any of the assets (whether in Gibraltar or elsewhere) of a licence holder;
- (b) to restrict such disposals or dealings; or
- (c) to require that any of the following assets be transferred to and held by a trustee approved by the Supreme Court–
  - (i) all or any of the assets of a licence holder; or
  - (ii) all or any of those assets which belong to consumers but are held by the licence holder or to the licence holder’s order.

(3) On an application made under subsection (1), the Court may make such order as it considers necessary or desirable to protect the interests of consumers or to protect the public interest.

(4) An application under subsection (1) must not be made unless the Commissioner has either–

- (a) given the licence holder, and any other person whom the Commissioner considers is likely to be subject to an asset protection order, at least two working days’ notice of its intention to make the application; or
- (b) certified to the court that the circumstances of the case are such that the Commissioner considers that the purpose of the application would be likely to be frustrated or seriously prejudiced by the giving of notice under paragraph (a).

(5) The Court may rescind or vary an asset protection order on its own motion or on the application of the Commissioner, the licence holder or any other person subject to the order.

## *Connected persons*

### **Persons connected with an applicant.**

46. In considering—

- (a) an application for a licence under this Part;
- (b) whether to vary or cancel such a licence; or
- (c) whether to impose or vary a requirement under this Part,

the Authority or the Commissioner (as the case may be) may have regard to any person appearing to him to be, or to be likely to be, in a relationship with the licence holder which is relevant including the ultimate beneficial owner of any legal person or entity .

## *Persons whose interests will be protected*

### **Persons whose interests will be protected.**

47. For the purpose of any provision of this Act which refers to the designated regulatory objectives of the Authority in relation to the exercise of a power in respect of a particular licence holder, it does not matter whether there is a relationship between that licence holder and the persons whose interests will be protected by the exercise of the power.

## *Procedure for applications and determinations under this Part*

### **Applications under this Part.**

48.(1) An application for a licence under this Part must—

- (a) contain a statement of the regulated activity or regulated activities which the applicant proposes to carry on and for which the applicant wishes to have permission;
- (b) give the address of a place in Gibraltar for service on the applicant of any notice or other document which is required or authorised to be served on the applicant under this Act; and
- (c) comply with the requirements in Regulations in that respect.

(2) An application for the variation of a licence under this Part must contain a statement—

- (a) of the desired variation; and
- (b) of the regulated activity or regulated activities which the applicant proposes to carry on if the licence is varied.

(3) An application for the variation of a requirement imposed under section 43 or for the imposition of a new requirement must contain a statement of the desired variation or requirement.

(4) An application under this Part must—

- (a) be made in such manner as may be prescribed; and
- (b) contain, or be accompanied by, such other information as —
  - (i) may be prescribed; or
  - (ii) the Authority may reasonably require.

(5) At any time after the application is received and before it is determined, the Authority may require the applicant to provide him with such further information as he reasonably considers necessary to enable him to determine the application.

(6) Different directions may be given, and different requirements imposed, in relation to different applications or categories of application.

(7) The Authority may require an applicant to provide information which the applicant is required to provide to him under this section in such form, or to verify it in such a way, as the Authority may direct.

#### **Determination of applications.**

49.(1) An application under this Part shall be determined by the Authority as soon as reasonably practicable after the Authority has received the completed application and any other information or documents that he has requested under this Part.

(2) The Authority may determine an incomplete application if he considers it appropriate to do so.

(3) The applicant may withdraw the application, by giving the Authority notice, at any time before the Authority determines it.

(4) The Authority must give the applicant notice if he grants an application—

(a) for a licence under this Part ;

(b) for the variation or cancellation of a licence under this Part .

(5) The Commissioner must give the applicant notice if he grants an application-

(a) for the variation or cancellation of a requirement imposed under section 43; or

(b) for the imposition of a new requirement under that section.

(6) The notice must state the date from which the licence , variation, cancellation or requirement has effect.

#### **Determination of applications: notice procedure.**

50.(1) The Authority must give a licence holder a warning notice if the Authority proposes—

(a) to vary a licence on the application of a licence holder but to exercise its power under section 37(4)(a) or (b) in connection with the application for variation; or

(b) to vary a licence under Part 5 on the application of a licence holder but to exercise its power under section 43 in connection with the application for variation.

(2) The Authority must give the applicant a decision notice if the Authority decides—

- (a) to vary a licence on the application of a licence holder but to exercise its power under section 37(4)(a) or (b);
- (b) to vary a licence on the application of a licence holder but to exercise its power under section 43 in connection with the variation; or
- (c) to refuse an application under this Part.

(3) In relation to any one or more steps the Authority is required to take under this section, the Minister may by regulations—

- (a) disapply the requirement to take the step in prescribed circumstances; or
- (c) make provision for the Authority to follow such other step or steps as may be specified in the regulations.

**Authority’s and Commissioner’s own initiative variation or requirement power: notice procedure.**

51.(1) Except in any case to which section 52 applies,—

- (a) the Authority must give a licence holder a warning notice if the Authority proposes to exercise the Authority’s power under section 42(2)(a) to vary the licence holder’s licence (“Authority’s variation power”); or
- (b) the Authority or the Commissioner (as the case may be) must give a licence holder a warning notice if the Authority or the Commissioner (as the case may be) proposes to exercise the power under section 43 to impose a requirement on the licence holder or to vary any such requirement (“The Requirement power”).

(2) The Authority must give the licence holder a decision notice if the Authority decides to exercise the Authority’s variation power.

(3) The Authority or the Commissioner (as the case may be) must give the licence holder a decision notice if the Authority or the Commissioner decides to exercise the Requirement power.

**Directions in urgent cases.**

52.(1) In this section and in section 53 “the Decision-maker” means –

- (a) In the case of the exercise by the Authority of the Authority’s variation power, the Authority; and
- (b) In the case of the exercise by the Authority or the Commissioner of the Requirement power, whichever of the two exercises the power.

(2) If all of conditions A to D are met in relation to a licence holder (“LH”) –

- (a) the Decision-maker may by direction vary LH’s permission by–
  - (i) suspending a regulated activity from those to which the licence relates; or
  - (ii) varying the description of a regulated activity to which the licence relates;  
or
- (b) the Decision-maker may by direction impose a requirement on LH or vary a requirement already imposed on LH under section 43.

(3) Condition A is that the Decision-maker is considering whether to exercise–

- (a) the Authority’s power under section 42(2)(a)(ii) or (iii) to vary LH’s licence ; or
- (b) the Commissioner’s power under section 43 or the Authority’s power under section 43(7) to impose a requirement on LH or to vary any such requirement.

(4) Condition B is that the Decision-maker, having regard to the ground on which he is considering exercising the power in question, reasonably considers that that there is an immediate risk of substantial damage to–

- (a) the interests of consumers;



(b) the public interest; or

(c) the reputation of Gibraltar.

(5) Condition C is that the Decision-maker reasonably considers that the giving of a direction under this section is–

(a) to a material extent, likely to avoid the occurrence of the damage referred to in subsection (4) or to reduce the extent of such damage; and

(b) proportionate to the achievement of that objective having regard, in particular, to the adverse consequences for the licence holder that may result from that direction.

(6) Condition D is that the Decision-maker gives LH a notice which states that the variation of licence , or the imposition or variation of a requirement, takes effect on the date of the notice or on such later date as may be specified in the notice.

(7) A direction under subsection (2) takes effect on the date specified in the notice under subsection (6).

(8) A notice under subsection (6) must–

(a) give details of the variation of the licence , or the requirement or its variation, which is the subject of the direction under subsection (2);

(b) identify which of the grounds specified in subsection (4) the Decision-maker is relying on and how that ground is engaged;

(c) state the Decision-maker's reasons for varying the licence or imposing or varying the requirement;

(d) specify why the Decision-maker considers that the requirements of each of paragraphs (a) and (b) of subsection (5) is met;

- (e) inform LH that LH may make representations to the Decision-maker within such period as may be specified in the notice;
- (f) inform LH of when the variation of licence or the imposition or variation of the requirement takes effect;
- (g) inform LH of the right to make an application under section 53(1); and
- (h) indicate the procedure to be followed in making any such application.

(9) The Decision-maker may extend the period allowed under the notice for making representations.

**Revocation or variation of directions.**

53.(1) The Supreme Court may, on an application made to it by the licence holder of which not less than two working days' notice has been given to the Decision-maker-

- (a) direct the Decision-maker to revoke any direction given under section 52(1); or
- (b) quash or vary anything done by the Decision-maker under section 52.

(2) A licence holder may apply to the Decision-maker for the revocation or variation of a direction and, if the Decision-maker refuses to grant the application, it must give the licence holder a notice stating the reasons for the refusal.

(3) The Decision-maker —

- (a) may revoke or vary a direction under section 52(1); and
- (b) must revoke the direction if either condition B or C specified in section 52 ceases to be met.

(4) A direction under section 52(1) ceases to have effect—

- (a) if it is revoked under this section; or

- (b) unless subsection (5) applies, on the expiry of the period of two months beginning with the date of the notice under section 52(6).

(5) Where, before the end of the period referred to in subsection (4)(b), a warning notice under section 50(1) is given to the licence holder in connection with the regulated activity or requirement that is subject to the direction under section 52(1), the direction does not cease to have effect until–

- (a) the expiry of the period within which an appeal may be made against any decision notice under section 50(2) which has been given to the licence holder in connection with that regulated activity or requirement; or
- (b) when any appeal is finally determined or withdrawn.

**Cancellation of licence : notice procedure.**

54.(1) If the Authority proposes to cancel a licence holder’s licence under this Part otherwise than at the licence holder’s request, it must give the licence holder a warning notice.

(2) If the Authority decides to cancel a licence holder’s licence otherwise than at the licence holder’s request, it must give the licence holder a decision notice.

**PART 5**

**REGULATED FUNCTIONS AND REGULATED INDIVIDUALS**

*Introduction*

**Application of Part 5.**

55. This Part requires a licence holder to ensure that regulated functions are carried out on its behalf by or under the responsibility of a regulated individual.

## **Interpretation of Part 5.**

56. In this Part–

“candidate” means an individual in respect of whom an application for approval as a regulated individual is made;

“regulated function” has the meaning given to it in section 57; and

“regulated individual” means a person approved by the Commissioner to perform or to be responsible for the performance of a regulated function.

### *Regulated individuals*

#### **Regulated functions.**

57. A regulated function is–

- (a) a function, in a licence holder, listed in Schedule 3; and
- (b) the function of exercising a significant influence over a licence holder (see section 60).

#### **Obligation to ensure regulated functions being performed.**

58.(1) Subject to section subsection (3), a licence holder must ensure that it has a regulated individual performing or responsible for the performance of regulated functions.

(2) The same individual may perform or be responsible for the performance of more than one regulated function.

(3) A licence holder must ensure that it has a regulated individual performing the regulated functions specified in Part 1 of Schedule 3.

#### **Regulated functions only to be performed by or under the responsibility of regulated individuals.**

59.(1) A regulated function must be either –

- (a) performed by; or
- (b) performed under the supervision of a regulated person.

(2) A licence holder must take appropriate steps to ensure that subsection (1) is not breached in relation to a regulated function in that licence holder.

(3) If a person (“A”) purports or attempts to perform a regulated function without either(a) being a regulated individual; or

(b) being under the supervision of a regulated individual,

A is to be treated as a regulated individual for the purposes of any civil or criminal liability under this Act or any other enactment.

#### **Significant influence.**

60.(1) The exercise of significant influence over a licence holder is a regulated function.

(2) A person exercises significant influence over a licence holder if there are reasonable grounds for believing that–

- (a) the person has significant influence over, or responsibility for, one or more aspects of the licence holder’s regulated functions, despite not formally having that role; and
- (b) those aspects involve a risk of serious consequence–
  - (i) for the licence holder; or
  - (ii) for the interests of Gibraltar.

(3) In this section, the reference to having significant influence over, or responsibility for, one or more aspects of a licence holder's regulated functions includes a reference to taking significant decisions about how one or more aspects of those functions should be carried on.

(4) The fact that a person performs a function listed in Schedule 3 in the licence holder, without being under the practical and effective supervision of a regulated individual who is able to instruct that person in relation to the performance of that function may be regarded as reasonable grounds for believing that the person exercises significant influence over the licence holder.

(5) A licence holder must ensure that no person who is not a regulated individual exercises significant influence over that licence holder.

**Temporary position.**

61.(1) This section applies where a regulated individual who was performing or responsible for the performance of a regulated function ceases to perform it or to be responsible for its performance in circumstances where it would be unreasonable to expect the licence holder to find a replacement immediately.

(2) The following obligations do not apply in respect of that regulated function until the regulated function is being performed by a regulated individual, or a regulated individual is responsible for its performance –

(a) the obligation in section 58 to ensure that regulated functions are being performed; and

(b) the obligation in section 59 to ensure that regulated functions are only to be performed by or under the responsibility of regulated individuals.

(3) Licence holders must take all necessary steps, as quickly as possible, to–

(a) temporarily appoint an individual to perform that regulated function; and

- (b) make an application for an individual to be approved by the Commissioner to perform or be responsible for the performance of that regulated function .

**Power to amend list of regulated functions.**

62. The Minister may by regulations amend Schedule 3 by adding, modifying or removing a regulated function or by transferring a function from one part to another part of that Schedule.

**Power to issue guidance on regulated functions.**

63. The Commissioner may issue guidance on the nature of the responsibilities of a regulated function.

*Approval of regulated individuals by the Commissioner*

**Regulated individuals to be approved by the Commissioner.**

64. An individual may only act as a regulated individual if the Commissioner has approved the individual to perform or to be responsible for the performance of a specified regulated function in a specified licence holder.

**Criteria for approval.**

65.(1) The criteria for approval are that the individual—

- (a) is fit and proper to perform or to be responsible for the performance of the regulated function; and

- (b) is able to perform or to be responsible for the performance of the regulated function in the licence holder.

(2) Without limiting subsection (1), in considering whether to approve an individual, the Commissioner shall have regard to whether the individual has the skills, qualifications and experience required to perform or to be responsible for the performance of the regulated function.

### **Applications for approval.**

66.(1) An application for approval must be made by the licence holder concerned.

(2) The application must—

- (a) be made in the form and manner the Commissioner directs;
- (b) include a statement of the individual's responsibilities; and
- (c) contain such information as the Commissioner reasonably requires.

(3) The Commissioner may require the individual to be interviewed by him.

(4) The Commissioner may require the licence holder to provide it with such further information as it reasonably considers necessary to enable it to determine the application.

(5) Where more than one application for approval is sought in respect of the same individual, the Commissioner may deal with some or all of the applications at the same time if it considers that it is appropriate to do so.

### **Pre-application vetting of candidates by licence holders.**



67. Before a licence holder makes an application for approval, the licence holder must be satisfied that the candidate satisfies the criteria for approval.

**Determination of applications.**

68.(1) If a candidate satisfies the criteria for approval, the Commissioner may approve the candidate's application.

(2) In exceptional circumstances, approval may be subject to such conditions as the Commissioner considers appropriate.

(3) If the Commissioner considers that a candidate will satisfy the criteria for approval, provided that the candidate complies with specified requirements within a specified period of time, the Commissioner may provisionally approve the application.

(4) Where approval is provisional and the Commissioner considers that the candidate—

(a) has satisfied the criteria for approval, then approval is no longer provisional;

(b) has not satisfied the criteria within the specified period, then the provisional approval lapses at the end of that period.

(5) The Commissioner may extend the specified period on one or more occasions.

(6) The Commissioner must, before the end of the period for consideration, determine whether—

(a) to approve the application;

(b) to provisionally approve the application; or

(c) to proceed under section 74.

(7) If the Commissioner approves or provisionally approves the application, it must give notice to—

(a) the licence holder; and

(b) the candidate.

(8) The licence holder which makes an application may withdraw it by giving notice to the Commissioner at any time before the Commissioner determines it.

(9) Where subsection (8) applies, the licence holder must notify the candidate of the withdrawal.

**Period of consideration for determination of applications.**

69.(1) In section 68 and this section, the “period for consideration” means the period of 30 days (excluding public and bank holidays) beginning with the date on which the Commissioner receives the application under this Part.

(2) If the Commissioner imposes a requirement under section 66(4), the period for consideration stops running on the day on which the requirement is imposed but starts running again—

(a) on the day on which the required information is received by the Commissioner;  
or

(b) if the information is not provided on a single day, on the last of the days on which it is received by the Commissioner.

(3) If the Commissioner requires additional information from another person in order to properly determine an application, the period for consideration stops running on the day the Commissioner seeks that information from that person, but starts running again–

(a) on the day on which that information is received by the Commissioner; or

(b) if the information is not provided on a single day, on the last of the days on which it is received by the Commissioner.

(4) In exceptional circumstances, the Commissioner may extend the period for consideration.

#### *Notification of changes*

#### **Changes in responsibilities of regulated individuals.**

70.(1) This section applies where there has been a significant change in the nature or extent of the responsibilities of a regulated individual from the original statement of responsibilities.

(2) The licence holder must provide the Commissioner with a revised statement of responsibilities of the regulated individual.

(3) The Commissioner may require the licence holder–

(a) to provide it with such further information as the Commissioner reasonably considers necessary; or

(b) to verify such information in such a way that the Commissioner reasonably considers necessary.

## *Withdrawal or variation of approval*

### **Withdrawal of approval.**

71.(1) The Commissioner may withdraw an approval if he has reasonable and proper grounds to consider that the individual in respect of whom it was given no longer satisfies the criteria for approval.

(2) Without limiting subsection (1), the Commissioner must, in particular, consider whether the individual–

- (a) has participated in serious misconduct in relation to the business of a licence holder;
- (b) has intentionally misled the Commissioner or the Authority;
- (c) has directly or indirectly provided information to the Commissioner or the Authority that the individual knew or ought to have known was false or misleading;
- (d) has been convicted of an offence (whether in Gibraltar or elsewhere) involving a financial crime; or
- (e) is no longer a fit and proper person

### **Variation of approval on application by licence holder.**

72.(1) Where approval has effect subject to conditions, the licence holder concerned may apply to the Commissioner to vary the approval by–

- (a) varying a condition;

(b) removing a condition; or

(c) imposing a new condition.

(2) When considering whether to vary its approval, the Commissioner may take into account any matter which it could take into account if it were considering an application for approval.

(3) The Commissioner must, before the end of the period for consideration, determine whether—

(a) to grant the application; or

(b) to proceed under section 74.

(4) The “period for consideration” means the period of 30 days (excluding public and bank holidays) beginning with the date on which the Commissioner receives the application.

(5) The Commissioner may require the licence holder to provide it with such further information as it reasonably considers necessary to enable it to determine the application.

(6) If the Commissioner imposes a requirement under section 72(5), the period for consideration stops running on the day on which the requirement is imposed but starts running again—

(a) on the day on which the required information is received by the Commissioner; or

(b) if the information is not provided on a single day, on the last of the days on which it is received by the Commissioner.

(7) If the Commissioner requires additional information from another person in order to properly determine an application, the period for consideration stops running on the day the Commissioner seeks that information from that person, but starts running again—

(a) on the day on which that information is received by the Commissioner; or

(b) if the information is not provided on a single day, on the last of the days on which it is received by the Commissioner.

(8) The Commissioner may extend the period for consideration in exceptional circumstances.

#### **Variation of approval on initiative of the Commissioner.**

73.(1) The Commissioner may vary an approval—

(a) by removing a condition; or

(b) in exceptional circumstances, by imposing or varying a condition.

(2) When considering whether to vary its approval, the Commissioner may take into account any matter which it could take into account if it were considering an application for approval.

#### *Notices and appeals*

#### **Notice procedure and appeals.**

74.(1) This section applies where the Commissioner proposes or decides to–

- (a) refuse an application for approval;
- (b) approve an application subject to conditions;
- (c) withdraw an approval;
- (d) refuse an application to vary an approval; or
- (e) vary an approval on its own initiative.

(2) Where the Commissioner–

- (a) proposes to make a decision in subsection (1), it must give the interested parties a warning notice; or
- (b) decides to make a decision in that subsection, it must give the interested parties a decision notice.

(3) Subsection (2)(a) does not apply if the Commissioner is satisfied that a warning notice–

- (a) cannot be given because of urgency;
- (b) should not be given because of the risk that steps would be taken to undermine the effectiveness of the refusal, withdrawal or variation (as the case may be); or
- (c) is superfluous having regard to the need to give notice of legal proceedings, or for some other reason.

(4) A person aggrieved by a decision notice under subsection (2)(b) may appeal against the decision under section 146 but a decision notice in respect of any of the following decisions takes effect immediately—

- (a) a refusal of an application for approval; or
- (b) a refusal of an application to vary an approval.

(5) In this section “the interested parties” means—

- (a) the licence holder who made the application; and
- (b) the individual in respect of whom the application was made.

*Duty to report to the Commissioner*

**Duty to report to Commissioner.**

75.(1) A licence holder must report the following matters to the Commissioner without delay—

- (a) when an individual has ceased to perform or to be responsible for the performance of the functions of a regulated individual;
- (b) the reason why the individual has ceased to perform or to be responsible for the performance of those functions; and
- (c) any disciplinary action taken in relation to the individual’s performance or responsibility for the performance of those functions.



(2) In this section “disciplinary action” in relation to a regulated individual includes—

- (a) the issuing of a formal written warning;
- (b) the suspension or dismissal of the individual; or
- (c) the reduction or recovery of the individual’s remuneration.

### *Conduct of regulated individuals*

#### **Conduct regulations and codes of conduct.**

76. The Minister may make regulations governing the conduct required of regulated individuals.

77. (1) The Commissioner may issue guidance and codes of conduct relating to the conduct required of regulated individuals.

(2) The Minister may require the Commissioner to revoke or to amend in the manner specified by the Minister any guidance or codes of conduct made under this section and if the Commissioner does not do so within a period of 30 days, the Minister may revoke or amend that guidance or code of conduct .

## **PART 6**

### **CONTROL OVER LICENCE HOLDERS**

#### *Introduction*

## **Application of Part 6.**

78.(1) This Part only applies to licence holders.

## **Interpretation of Part 6.**

79.(1) In this Part–

“acquisition” means the acquisition of control of, or an increase in control over, a licence holder;

“section 83 notice” and “section 83 notice giver” have the meaning given in section 83(3);

“shares”, in relation to–

- (a) an undertaking with a share capital, means allotted shares;
- (b) an undertaking with capital but no share capital, means rights to share in the capital of the undertaking; and
- (c) an undertaking without capital, means interests–
  - (i) conferring any right to share in the profits, or liability to contribute to the losses, of the undertaking; or
  - (ii) giving rise to an obligation to contribute to the debts or expenses of the undertaking in the event of a winding up; and

“voting power”–

- (a) includes, in relation to a person (“H”)–
  - (i) voting power held by a third party with whom H has concluded an agreement, which obliges H and the third party to adopt, by concerted exercise of the voting power they hold, a lasting common policy towards the management of the undertaking in question;

- (ii) voting power held by a third party under an agreement concluded with H providing for the temporary transfer for consideration of the voting power in question;
  - (iii) voting power attaching to shares which are lodged as collateral with H, provided that H controls the voting power and declares an intention to exercise it;
  - (iv) voting power attaching to shares in which H has a life interest;
  - (v) voting power which is held, or may be exercised within the meaning of subparagraphs (i) to (iv), by a controlled undertaking of H;
  - (vi) voting power attaching to shares deposited with H which H has discretion to exercise in the absence of specific instructions from the shareholders;
  - (vii) voting power held in the name of a third party on behalf of H; or
  - (viii) voting power which H may exercise as a proxy where H has discretion about the exercise of the voting power in the absence of specific instructions from the shareholders; and
- (b) in relation to an undertaking which does not have general meetings at which matters are decided by the exercise of voting rights, means the right under the constitution of the undertaking to direct the overall policy of the undertaking or alter the terms of its constitution.

(2) For the purposes of this Part, an undertaking (“B”) is a controlled undertaking of H if–

- (a) H holds a majority of the voting rights in B;
- (b) H is a member of B and has the right to appoint or remove a majority of the members of the board of directors (or, if there is no such board, the equivalent management body) of B;
- (c) H is a member of B and controls alone, under an agreement with other shareholders or members, a majority of the voting rights in B; or
- (d) H has the right to exercise, or actually exercises, dominant influence or control over B.

(3) For the purposes of subsection (2)(b), the following rights are treated as held by H–

- (a) any rights of a person controlled by H; and
- (b) any rights of a person acting on behalf of H or a person controlled by H.

**Parent and subsidiary undertaking.**

80. In this Part a parent undertaking includes an individual who would be a parent undertaking if the individual were an undertaking (and subsidiary undertaking is to be read accordingly).

**Groups.**

81.(1) In this Part “group”, in relation to a person (“A”), means A and any person who is–

- (a) a parent undertaking of A;
- (b) a subsidiary undertaking of A;
- (c) a subsidiary undertaking of a parent undertaking of A;
- (d) a parent undertaking of a subsidiary undertaking of A; or
- (e) an undertaking in which A or an undertaking mentioned in paragraph (a), (b), (c) or (d) has a participating interest.

(2) “Participating interest” has the meaning given in section 82, but includes an interest held by an individual which would be a participating interest for the purposes of that section if the individual were an undertaking.

**Meaning of “participating interest”.**

82.(1) In section 81 a “participating interest” means an interest held by an undertaking in the shares of another undertaking which it holds on a long-term basis for the purpose of

securing a contribution to its activities by the exercise of control or influence arising from or related to that interest.

(2) A holding of 20% or more in the shares of an undertaking is presumed to be a participating interest unless the contrary is shown.

(3) The reference in subsection (1) to an interest in shares includes—

- (a) an interest which is convertible into an interest in shares; and
- (b) an option to acquire shares or any such interest.

(4) An interest or option falls within subsection (3)(a) or (b) notwithstanding that the shares to which it relates are, until the conversion or the exercise of the option, unissued.

(5) For the purposes of this section an interest held on behalf of an undertaking is to be treated as held by it.

(6) In this section “undertaking” has the meaning given in section 277(1) of the Companies Act 2014.

#### *Notice of acquisition of control over licence holder*

#### **Obligation to notify the Commissioner of acquisitions of control.**

83.(1) A person who decides to acquire or increase control over a licence holder must give the Commissioner notice before making the acquisition.

(2) For the purposes of calculations relating to this section, the holding of shares or voting power by a person (“A1”) includes any shares or voting power held by another (“A2”) if A1 and A2 are acting in concert.

(3) In this Part, a notice given under this section is a “section 83 notice” and a person giving notice is a “section 83 notice-giver”.

#### **Section 83 notices.**

84.(1) A section 83 notice must be in the form, and include any information and be accompanied by any documents, that the Commissioner may reasonably require.

(2) The Commissioner must publish a list of its requirements as to the form, information and accompanying documents for a section 83 notice.

(3) The Commissioner may impose different requirements for different cases and may vary or waive requirements in particular cases.

#### **Acknowledgement of receipt.**

85.(1) The Commissioner must acknowledge in writing receipt of a completed section 83 notice before the end of the second working day following receipt.

(2) If the Commissioner receives an incomplete section 83 notice he must inform the section 83 notice-giver as soon as reasonably possible.

#### *Acquiring control and other changes of holding*

#### **Acquiring control.**

86.(1) For the purposes of this Part, a person (“A”) acquires control over a licence holder (“B”) if any of the cases in subsection (2) begin to apply.

(2) The cases are where A holds—

- (a) 10% or more of the shares in B or in a parent undertaking of B (“P”);
- (b) 10% or more of the voting power in B or P; or
- (c) shares or voting power in B or P as a result of which A is able to exercise significant influence over the management of B.

### **Increasing control.**

87.(1) For the purposes of this Part, a person (“A”) increases control over a licence holder (“B”) whenever—

- (a) the percentage of shares which A holds in B or a parent undertaking of B (“P”) increases by any of the steps mentioned in subsection (2);
- (b) the percentage of voting power which A holds in B or P increases by any of the steps mentioned in subsection (2); or
- (c) A becomes a parent undertaking of B.

(2) The steps are—

- (a) from less than 20% to 20% or more;
- (b) from less than 30% to 30% or more; or
- (c) from less than 50% to 50% or more.

### **Reducing or ceasing to have control.**

88.(1) For the purposes of this Part, a person (“A”) reduces control over a licence holder (“B”) whenever—

- (a) the percentage of shares which A holds in B or a parent undertaking of B (“P”) decreases by any of the steps mentioned in subsection (2);
- (b) the percentage of voting power which A holds in B or P decreases by any of the steps mentioned in subsection (2); or
- (c) A ceases to be parent undertaking of B.

(2) The steps are—

- (a) from 50% or more to less than 50%;
- (b) from 30% or more to less than 30%; or
- (c) from 20% or more to less than 20%.

(3) For the purposes of this Part, as person (“A”) ceases to have control over a licence holder (“B”) if A ceases to be in the position of holding—

- (a) 10% or more of the shares in B or in a parent undertaking of B (“P”);
- (b) 10% or more of the voting power in B or P; or
- (c) shares or voting power in B or P as a result of which A is able to exercise significant influence over the management of B.

*Disregarded holdings.*

**Disregarded holdings.**

89.(1) For the purposes of sections 86 to 88, shares and voting power that a person holds in a licence holder (“B”) or in a parent undertaking of B (“P”) are disregarded in the following circumstances.

(2) Shares held only for the purposes of clearing and settling within a short settlement cycle are disregarded.

(3) Shares held by a custodian or its nominee in a custodian capacity are disregarded, if the custodian or nominee is only able to exercise voting power represented by the shares in accordance with instructions given in writing.

(4) For the purposes of this section, an undertaking is a controlled undertaking of the parent undertaking (“P”) if it is controlled by the parent undertaking; and for this purpose the question of whether one undertaking controls another is to be determined in accordance with section 79(2) and (3).

*Assessment procedure*



**Assessment: general.**

90.(1) Where the Commissioner receives a section 83 notice, he must forthwith refer it to the Authority.

(2) The Authority must -

- (a) determine whether to approve the acquisition to which the notice relates unconditionally; or
- (b) propose to—
  - (i) approve the acquisition subject to conditions (see section 92); or
  - (ii) object to the acquisition.

(3) The Authority must—

- (a) consider the suitability of the section 83 notice-giver and the financial soundness of the acquisition in order to ensure the sound and prudent management of the licence holder;
- (b) have regard to the likely influence that the section 83 notice-giver will have on the licence holder; and
- (c) disregard the economic needs of the market.

(4) The Authority may only object to an acquisition—

- (a) if there are reasonable grounds for doing so on the basis of the matters set out in section 91; or

- (b) if the information provided by the section 83 notice-giver is incomplete.

**Assessment criteria.**

91. The matters specified in section 90(4)(a) are–

- (a) the reputation of the section 83 notice-giver;
- (b) the reputation, knowledge, skills and experience of any person who will direct the business of the licence holder as a result of the proposed acquisition;
- (c) the financial soundness of the section 83 notice-giver, in particular in relation to the type of business that the licence holder pursues or envisages pursuing;
- (d) whether the licence holder will be able to comply with prudential requirements (including the threshold conditions in relation to all of the regulated activities for which it has or will have permission);
- (e) if the licence holder is to become part of a group as a result of the acquisition, whether that group has a structure which makes it possible to–
  - (i) exercise effective supervision;
  - (ii) exchange information among regulators; and
  - (iii) determine the allocation of responsibility among regulators; and
- (f) whether there are reasonable grounds to suspect that in connection with the proposed acquisition–
  - (i) financial crime is being or has been committed or attempted; or
  - (ii) the risk of such activity could increase.

**Approval with conditions.**

92.(1) The Authority may impose conditions on his approval of an acquisition.

(2) The Authority may only impose conditions where, if he did not impose those conditions, he would propose to object to the acquisition.

(3) The Authority may not impose conditions requiring a particular level of holding to be acquired.

(4) The Authority may vary or cancel the conditions.

**Assessment: procedure.**

93.(1) Within a period of 60 working days beginning with the day on which the Commissioner acknowledges receipt of the section 83 notice (“the assessment period”), the Authority must act under section 90.

(2) The assessment period may be interrupted, no more than once, in accordance with section 94.

(3) The Authority must inform the section 83 notice-giver in writing of–

- (a) the duration of the assessment period;
- (b) its expiry date; and
- (c) any change to the expiry date by virtue of section 94.

(4) The Authority must, within two working days of acting under section 90 (and in any event no later than the expiry date of the assessment period)–

- (a) notify the section 83 notice-giver that he has determined to approve the acquisition unconditionally; or
- (b) give a warning notice stating that he proposes to–
  - (i) approve the acquisition subject to conditions; or

(ii) object to the acquisition.

(5) Where the Authority gives a warning notice stating that he proposes to approve the acquisition subject to conditions—

(a) he must, in the warning notice, specify those conditions; and

(b) the conditions take effect as interim conditions.

(6) The Authority is treated as having approved the acquisition if, at the expiry of the assessment period, he has neither—

(a) given notice under subsection (4); nor

(b) informed the section 83 notice-giver that the section 83 notice is incomplete.

(7) If the Authority decides to approve an acquisition subject to conditions or to object to an acquisition the Authority must give the section 83 notice-giver a decision notice.

#### **Requests for further information.**

94.(1) The Authority may, no later than the 50th working day of the assessment period, in writing ask the section 83 notice-giver to provide any further information necessary to complete the assessment.

(2) On the first occasion that the Authority asks for further information, the assessment period is interrupted from the date of the request until the date the Authority receives the requested information (“the interruption period”).

(3) But the interruption period may not exceed 30 working days.

(4) The Authority may make further requests for information (but a further request does not result in a further interruption of the assessment period).

(5) The Authority must acknowledge in writing receipt of the further information before the end of the second working day following receipt.

### *Objections and enforcement*

#### **Objections to existing control.**

95.(1) The Authority may object to a person's control over a licence holder in any of the circumstances specified in subsection (2).

(2) The circumstances are that the Authority reasonably believes that—

- (a) the person acquired or increased control without giving notice under section 83(1) in circumstances where notice was required;
- (b) the person is in breach of a condition imposed under section 92; or
- (c) there are grounds for objecting to control on the basis of the matters dealt with in section 91.

(3) The Authority—

- (a) must take into account whether influence exercised by the person is likely to operate to the detriment of the sound and prudent management of the licence holder; and
- (b) may take into account whether the person has cooperated with any information requests made or requirements imposed by the Authority

(4) If the Authority proposes to object to a person's control over a licence holder, it must give that person a warning notice.

(5) If the Authority decides to object to a person's control over a licence holder the Authority must give that person a decision notice.

**Restriction notices.**

96.(1) The Authority may give notice (a "restriction notice") to a person in the following circumstances.

(2) The circumstances are that–

- (a) the person has control over a licence holder by virtue of holding shares or voting power; and
- (b) in relation to the shares or voting power, the Authority has given the person a warning notice or a decision notice under section 93 or 95.

(3) In a restriction notice, the Authority may direct that shares or voting power to which the notice relates are, until further notice, subject to one or more of the following restrictions–

- (a) except by order of the Supreme Court, an agreement to transfer or a transfer of any such shares or voting power or, in the case of unissued shares, any agreement to transfer or transfer of the right to be issued with them, is void;
- (b) no voting power is to be exercisable;
- (c) no further shares are to be issued in pursuance of any right of the holder of any such shares or voting powers or in pursuance of any offer made to their holder;
- (d) except in a liquidation, no payment is to be made of any sums due from the body corporate on any such shares, whether in respect of capital or otherwise.

(4) A restriction notice takes effect–

- (a) immediately, if the notice so provides; or
- (b) on the date specified in the notice.

(5) A copy of the restriction notice must be served on—

- (a) the licence holder in question; and
- (b) in the case of shares or voting power held in a parent undertaking of a licence holder, the parent undertaking.

(6) A person aggrieved by the Authority's decision to issue a restriction notice may appeal under section 146 against that decision.

#### **Orders for sale of shares.**

97.(1) The Supreme Court may, on the application of the Commissioner made with the prior written consent of the Authority, order the sale of the shares or the disposition of the voting power in the following circumstances.

(2) The circumstances are that—

- (a) a person has control over a licence holder by virtue of holding the shares or voting power; and
- (b) the acquisition or continued holding of the shares or voting power by that person is in contravention of a decision notice given under section 93 or 95 which has taken effect.

(3) Where the court orders the sale of shares or disposition of voting power it may—

- (a) if a restriction notice has been given in relation to the shares or voting power, order that the restrictions cease to apply; and

(b) make any further order.

(4) Where the court makes an order under this section, it must take into account the level of holding that the person would have been entitled to acquire, or continue to hold, without contravening the decision notice.

(5) If shares are sold or voting power disposed of in pursuance of an order under this section, any proceeds, less the costs of the sale or disposition, must be paid into court for the benefit of the persons beneficially interested in them; and any such person may apply to the court for payment of the whole or a part of the proceeds.

#### *Notices of reductions of control of licence holders*

#### **Obligation to notify Commissioner: dispositions of control.**

98.(1) A person who decides to reduce or cease to have control over a licence holder must give the Commissioner notice before making the disposition.

(2) For the purposes of calculations relating to this section, the holding of shares or voting power by a person ("A1") includes any shares or voting power held by another person ("A2") if A1 and A2 are acting in concert.

#### **Notices under section 98.**

99.(1) A notice under section 98 must be in such form, and include such information and be accompanied by such documents, as the Commissioner may reasonably require.



(2) The Commissioner must publish a list of its requirements as to the form, information and accompanying documents for a notice under section 98.

(3) The Commissioner may impose different requirements for different cases and may vary or waive requirements in particular cases.

### *Offences*

#### **Offences under this Part.**

100.(1) A person who fails to comply with an obligation to notify the Commissioner under section 83(1) or 98(1) commits an offence.

(2) A person who gives notice to the Commissioner under section 83(1) and makes the acquisition to which the notice relates before the expiry date of the assessment period commits an offence unless the Authority has approved the acquisition or given a warning notice under section 93(4)(b)(i).

(3) A person who contravenes an interim condition in a warning notice given under section 93(4)(b)(i) or a condition in a decision notice given under section 93(7) commits an offence.

(4) A person who makes an acquisition in contravention of a warning notice given under section 93(4)(b)(ii) or a decision notice given under section 93(7) commits an offence.

(5) A person who provides information to the Authority or the Commissioner which is false in a material particular commits an offence.

(6) A person who breaches a direction contained in a restriction notice given under section 96 commits an offence.

(7) A person who commits an offence under subsection (1), (2) (3), (5) or (6) is liable—

(a) on summary conviction, to the statutory maximum fine; or

(b) on conviction on indictment, to a fine.

(8) A person convicted an offence under subsection (4) is liable—

- (a) on summary conviction, to the statutory maximum fine; or
- (b) on conviction on indictment, to imprisonment for two years or a fine, or both.

### *Miscellaneous*

#### **Power to change definitions of control etc.**

101. The Minister may by regulations—

- (a) provide for exemptions from the obligations to notify imposed by section 83 and 98;
- (b) amend section 86 by varying, or removing, any of the cases in which a person is treated as acquiring control over a licence holder or by adding a case;
- (c) amend section 87 by varying, or removing, any of the cases in which a person is treated as increasing control over a licence holder or by adding a case;
- (d) amend section 88 by varying, or removing, any of the cases in which a person is treated as reducing or ceasing to have control over a licence holder or by adding a case; or
- (e) amend section 102(3) by modifying, or removing, any of the cases in which a person is treated as being a controller of a person or by adding a case.

## **PART 7**

### **INFORMATION GATHERING AND INVESTIGATORY POWERS**

#### *Interpretation*

**Relevant persons.**

102.(1) In this Part, a “relevant person” means–

- (a) a licence holder;
- (b) a regulated individual;
- (c) a statutory auditor of a licence holder;
- (d) a former licence holder , in relation to the time when the person was a licence holder;
- (e) a former regulated individual, in relation to the time when the person was a regulated individual;
- (f) a former statutory auditor of a licence holder;
- (g) a connected person.

(2) In subsection (1), a “connected person” means a person who is or at any relevant time has been connected to a person in subsection (1)(a) or (b) (“A”) as–

- (a) a member of A’s group;
- (b) a controller of A;
- (c) a member of a partnership of which A is a member; or
- (d) in relation to A, a person mentioned in Schedule 4.

(3) “Controller”, in relation to an undertaking (“B”), means a person (“A”) who falls within any of the cases in subsection (4).

(4) The cases are where A holds–

- (a) 10% or more of the shares in B or a parent undertaking of B (“P”);
- (b) 10% or more of the voting power in B or P; or

(c) shares or voting power in B or P as a result of which A is able to exercise a significant influence over the management of B.

(5) For the purposes of calculations relating to this section, the holding of shares or voting power by a person (“A1”) includes any shares or voting power held by another (“A2”) if A1 and A2 are acting in concert.

(6) In this section, “shares” and “voting power” have the meaning given in Part 6.

(7) For the purposes of subsections (4) to (6), shares and voting power that a person holds in an undertaking (“B”) or in a parent undertaking of B (“P”) are to be disregarded in the circumstances set out in section 89(2)–(4).

#### *Powers to obtain information and documents*

#### **Power to require documents and information.**

103.(1) The Commissioner may by notice require a relevant person–

- (a) to provide the Commissioner with specified information or information of a specified description;
- (b) to produce to the Commissioner specified documents or documents of a specified description; or
- (c) to attend before the Commissioner, at a specified time and place, to–
  - (i) answer questions appearing to the Commissioner to be relevant in connection with the exercise of its functions specified in subsection (2); and
  - (ii) provide any information that the Commissioner may require.

(2) Subsection (1) only applies to information and documents that the Commissioner reasonably requires in connection with the exercise of functions conferred on him by or under this Act.

(3) A notice under subsection (1)(a) or (b) may require–

- (a) a relevant person to provide information or produce documents—
  - (i) before the end of a specified period;
  - (ii) at specified intervals; or
  - (iii) at a specified time or place;
- (b) any information which a relevant person is required to provide to be verified in a specified manner; or
- (c) any document which a relevant person is required to produce to be authenticated in a specified manner.

(4) In this section “specified” means specified in a notice given under subsection (1).

(5) Where any information or document is not recorded in legible form, a requirement to provide or produce it includes the requirement to supply a copy of it in legible form.

(6) The Commissioner may—

- (a) take copies of or extracts from any document produced;
- (b) require the person who has provided information or produced a document to provide an explanation of that information or document; and
- (c) require a person to state, to the best of the person’s knowledge and belief, where any information or document might be found.

(7) The Commissioner may require any person who appears to the Commissioner to be in possession of any information or document specified in a notice under subsection (1) to provide that information or produce that document.

(8) In respect of a person who is a barrister or solicitor acting in their professional capacity—

(a) this section applies subject to section 114(2); and

(b) nothing in this section requires a barrister or solicitor to disclose any information or document which is subject to legal professional privilege.

**Extension of powers to obtain information, etc.**

104. The Commissioner's powers under section 103 may also be exercised in respect of any person who appears to the Commissioner to be carrying on, or holding out as carrying on, in or from Gibraltar, a regulated activity or an activity which requires authorisation, a licence, registration, approval or recognition under this Act.

**Power to carry out on-site inspection.**

105.(1) The Commissioner may carry out on-site inspections of any premises of a relevant person (other than a dwelling) in connection with the exercise of functions conferred on the Minister, the Authority or the Commissioner by or under this Act.

(2) An inspection under subsection (1) may be carried out on behalf of the Commissioner by a member of the Commissioner's staff or by any suitable person appointed in writing by the Commissioner for that purpose.

(3) The power in subsection (1) may be exercised by the Commissioner, at reasonable times and on reasonable notice, with the consent of the relevant person and, in the case of the business premises of a barrister or solicitor, only in accordance with a court order under section 114(2).

(4) Subsection (3) shall not apply to any premises where a gambling machine is located.

(5) In conducting an on-site inspection (and subject to the terms of any order under section 114(2)) the Commissioner may—

- (a) inspect any part of the premises;
- (b) examine and investigate the gambling facilities of a licence holder, including all machinery, equipment, software and data that form the systems, events, offers or records of gambling services;
- (c) examine and investigate the corporate records of a licence holder including but not limited to the papers and minutes of any board meeting or committee of the board, meetings of shareholders or other formal meetings of the controlling parties of the licence holder;
- (d) examine and investigate the gambling and transaction records of any customer who has transacted with a licence holder , including the events or offers that form the bets, gaming or any other form of gambling;
- (e) question any person on the premises; and
- (f) require access to and take a copy of any document or information which is kept on the premises.

(6) Nothing in this section requires a barrister or solicitor to disclose any information or document which is subject to legal professional privilege.

**Entry of premises under warrant.**

106.(1) A magistrate may issue a warrant under this section if the magistrate is satisfied, on information on oath, that there are reasonable grounds for believing that the first, second or third set of conditions is satisfied.

(2) The first set of conditions is–

- (a) that a person on whom an information requirement has been imposed has failed (wholly or in part) to comply with it; and
- (b) that on the premises specified in the warrant–
  - (i) there are documents which have been required; or
  - (ii) there is information which has been required.

(3) The second set of conditions is–

- (a) that the premises specified in the warrant are premises of a relevant person;
- (b) that there are on the premises documents or information in relation to which an information requirement could be imposed; and
- (c) that if an information requirement was imposed–
  - (i) it would not be complied with; or
  - (ii) the documents or information would be removed, tampered with or destroyed.

(4) The third set of conditions is–



- (a) that a relevant offence has been (or is being) committed by any person;
- (b) that there are on the premises specified in the warrant documents or information relevant to whether that offence has been (or is being) committed;
- (c) that an information requirement could be imposed in relation to those documents or information; and
- (d) that if an information requirement was imposed—
  - (i) it would not be complied with; or
  - (ii) the documents or information would be removed, tampered with or destroyed.

(5) An application for a warrant under this section may be made by a constable or the Commissioner.

(6) A warrant under this section—

- (a) authorises any constable—
  - (i) to enter the premises specified in the warrant;
  - (ii) to search the premises and take possession of any documents or information appearing to be documents or information of a kind in respect of which the warrant was issued (“the relevant kind”) or take any other steps which may appear to be necessary for preserving or preventing interference with any documents or information appearing to be of the relevant kind;
  - (iii) to take copies of, or extracts from, any documents or information appearing to be of the relevant kind;

- (iv) to require any person on the premises to provide an explanation of any document or information appearing to be of the relevant kind or to state where it may be found; and
  - (v) to use any force that may be reasonably necessary; and
- (b) may authorise a person acting under the authority of the Commissioner –
- (i) to accompany any constable who is executing the warrant; and
  - (ii) to exercise any powers under subsection (a) in the company and under the supervision of a constable.

(7) In this section–

“information requirement” means any requirement imposed by the Commissioner under section 103 or 104 ; and

“relevant offence” means–

- (a) an offence under this Act for which a penalty of two years imprisonment may be imposed; or
- (g) an offence under Part III of the Proceeds of Crime Act 2015 (money laundering offences).

(8) A person who wilfully obstructs another person in the exercise of any power under subsection (6) commits an offence and is liable on summary conviction to imprisonment for 12 months or to the statutory maximum fine, or both.

#### *Skilled persons' reports*

#### **Skilled Person's Report.**

107.(1) The Commissioner may by notice require a person in subsection (2) to appoint a person (“the skilled person”) to provide the Commissioner with a report on any matter about which the Commissioner may reasonably require information in connection with the exercise of the functions conferred on it by or under this Act.

(2) Subsection (1) applies to—

- (a) a licence holder (“A”);
- (b) any other member of A’s group;
- (c) a partnership of which A is a member; or
- (d) a person who has at any relevant time been a person falling within paragraph (a), (b) or (c), who is, or was at the relevant time, carrying on a business.

(3) The skilled person must be—

- (a) a person appearing to the Commissioner to have the professional skills necessary to make a report on the matter concerned; and
- (b) nominated or approved by the Commissioner.

(4) Without limiting subsection (1), the Commissioner may specify in a notice under that subsection—

- (a) the date by which a skilled person must be appointed;
- (b) the date by, or intervals at which, the skilled person’s report must be provided to the Commissioner; and

(c) the form in which a skilled person's report must be made.

(5) The Commissioner, with the consent of the Minister, must prepare and publish a policy statement setting out the principles that it will apply in exercising its powers under subsections (1) to (4).

(6) The costs of producing a skilled person's report are to be borne by the person required to provide the report.

(7) It is the duty of the person who is the subject of a skilled person's report to give the skilled person any assistance that the skilled person may reasonably require.

(8) An auditor of a relevant person is not to be regarded as contravening any duty owed to the relevant person if the auditor communicates to the Commissioner in good faith (and whether or not in response to a request made by the Commissioner)—

(a) any information relating to the business or affairs of the relevant person of which the auditor becomes aware; or

(b) any opinion which the auditor may form concerning the business or affairs of the relevant person,

when acting in the capacity of the auditor of the relevant person or as a person appointed to make a skilled person's report in respect of the relevant person.

(9) In subsection (8) any reference to information relating to or concerning the business or affairs of the relevant person includes a reference to information that relates to or concerns the business or affairs of a body with which the relevant person is linked by control and which is relevant to the exercise of any functions conferred on the Commissioner by or under this Act.

### *Inspectors*

#### **Appointment of inspectors.**

108.(1) The Commissioner may appoint a person who he considers to be competent to do so (“an inspector”) to investigate, on the Commissioner’s behalf, the affairs of a person in subsection (2) if–

- (a) he has reasonable grounds to suspect that the person has contravened a requirement imposed by or under this Act; or
- (b) if it appears to the Commissioner that on other grounds there are good reasons for doing so.

(2) Subsection (1) applies to any person in Gibraltar who–

- (a) carries on, or who the Commissioner reasonably suspects of carrying on, a regulated activity in or from Gibraltar;
- (b) has carried on, or who the Commissioner reasonably suspects has carried on, a regulated activity in or from Gibraltar; or
- (c) is a relevant person (other than a banker, auditor or actuary mentioned in paragraph 6 of Schedule 4).

(3) In deciding whether to appoint an inspector who is not a Commissioner’s Staff, the Commissioner must have regard to the proportionality of the cost of doing so, having regard to–

- (a) the seriousness of the suspected contravention or the matters giving rise to the good reasons for appointing an inspector on other grounds;
- (b) any sanction it could reasonably impose in respect of that contravention or any measure it could reasonably take in respect of those other grounds; and
- (c) the seriousness of the consequences of the suspected contravention or the matters relating to those other grounds in terms of the Commissioner’s regulatory objectives.

(4) The Gibraltar courts have exclusive jurisdiction in relation to any matter arising from or relating to the discharge by an inspector of any function under this Part and–

- (a) in accepting appointment as an inspector under this Part, a person is to be treated as having submitted to that exclusive jurisdiction; and
- (b) in the case of an inspector who has no place of business or residence in Gibraltar, any process or notice required to be served on the inspector is sufficiently served if it is–
  - (i) addressed to or marked for the attention of the inspector at the offices of the Commissioner; and
  - (ii) left at or sent by post to the Commissioner’s offices or sent by email to the Commissioner.

(5) In exercising any functions under this Part, an inspector acts as agent for the Commissioner, who is responsible for the acts and omissions of the inspector in exercising those functions.

(6) Subject to any immunity granted under this Act, nothing in subsection (4) affects an inspector’s liability in contract or tort to any person, including the Commissioner.

**Powers of inspectors.**

109.(1) An inspector appointed under section 108 may in Gibraltar–

- (a) examine on oath (and has the power to administer oaths for that purpose)–
  - (i) the person whose affairs are being investigated;
  - (ii) any employee of that person;

- (iii) where that person is a company, any of its officers, agents or employees;  
or
  - (iv) any banker to or auditor, barrister or solicitor of that person; or
- (b) if the inspector considers that it is necessary for the purpose of the investigation which the inspector has been appointed to conduct, the inspector may also investigate the affairs of any other person that is or at the relevant time was—
- (i) a member of any group of which the person under investigation (“A”) is a part; or
  - (ii) a partnership of which A is a member.

(2) If an inspector decides to investigate the business of any person in accordance with subsection (1)(b)—

- (a) the inspector must give the person notice of the decision; and
- (b) the inspector’s report may only include matters concerning that person to the extent that they are directly relevant to the investigation which the inspector has been appointed to conduct.

(3) Nothing in subsection (1)(a)(iv) requires—

- (a) a person to disclose any information or document which is subject to legal professional privilege; or
- (b) a person to disclose any information or document in respect of which the person owes an obligation of confidence by virtue of carrying on the business of banking unless—

- (i) the person is the person whose affairs are being investigated or a member of that person's group;
- (ii) the person to whom the obligation of confidence is owed is the person whose affairs are being investigated or a member of that person's group;
- (iii) the person to whom the obligation of confidence is owed consents to the disclosure or production; or
- (iv) the making of the requirement was authorised by the Minister.

(4) An auditor of a person whose affairs are being investigated is not to be regarded as contravening any duty owed to that person if the auditor communicates to the inspector in good faith (and whether or not in response to a request made by the inspector)–

- (a) any information relating to the business or affairs of that person of which the auditor becomes aware; or
- (b) any opinion which the auditor may form concerning the business or affairs of that person,

when acting in the capacity of the auditor of that person.

(5) In respect of a person who is a barrister or solicitor acting in their professional capacity–

- (a) this section applies subject to section 114 (2); and
- (b) nothing in this section requires a barrister or solicitor to disclose any information or document which is subject to legal professional privilege.



**Duty to produce records, etc.**

110.(1) It is the duty of–

- (a) any person whose affairs are being investigated by an inspector; and
- (b) any other person whom an inspector examines under section 109,

to supply the inspector with any information or document which is in the person's possession or control and which the inspector may reasonably require.

(2) In respect of a person who is a barrister or solicitor acting in their professional capacity–

- (a) this section applies subject to section 114(2); and
- (b) nothing in this section requires a barrister or solicitor to disclose any information or document which is subject to legal professional privilege.

**Inspector's report.**

111.(1) The inspector–

- (a) may (and, if the Commissioner so directs, must) make interim reports to the Commissioner during the course of the investigation; and
- (b) must make a final report to the Commissioner on the conclusion of the investigation.

(2) Where an interim report is made and—

- (a) within six months of being made, it is not followed by a final report; or
- (b) the Commissioner relies on the interim report to take regulatory action against any person,

that interim report is to be treated as the inspector's final report for the purposes of this section.

(3) The Commissioner —

- (a) must provide a copy of an inspector's final report to—
  - (i) every person who is the subject of the report (each of who is a "person concerned");
  - (ii) any member of a person concerned;
  - (iii) any person who is criticised or whose testimony to the inspector is referred to in the report; and
  - (iv) the Minister, on request; and
- (b) may provide a copy of an inspector's final report to—
  - (i) the auditors of a person concerned;
  - (ii) the Minister;

- (iii) other public authorities in Gibraltar or any other country or territory; and
- (iv) any person whose financial interests appear to the Commissioner to be affected by the matters dealt with in the report.

(4) Subject to subsection (5), the Commissioner must not publish an inspector's report unless—

- (a) based on the report, the Commissioner has found a person concerned culpable of a material contravention of this Act;
- (b) the report (or part of it) is published as part of the Commissioner's reasons for its decision in respect of the contravention;
- (c) publication is proportionate in the public interest, having regard to the gambling regulatory objectives and its likely effect on the person concerned;
- (d) the person concerned has been given at least seven days' notice of the Commissioner's intention to publish the report;
- (e) the requirements of subsection (6) are met; and
- (f) the report is published in an anonymised or redacted form from which any other person concerned cannot be identified (whether directly or indirectly).

(5) Where—

- (a) an inspector's report contains no adverse findings in respect of a person concerned; or
- (b) based on the report, the Commissioner has not found a person concerned to be culpable of a material contravention of this Act,

at the request of the person concerned (and subject to any other limitation under this Part on its ability to do so), the Commissioner must publish the report or a summary of the inspector's findings in respect of the person concerned and, where relevant, a summary of any decision made by the Commissioner.

(6) If any other person is criticised or their testimony is referred to in an inspector's report which the Commissioner proposes to publish, before doing so the Commissioner must—

- (a) provide the person with a copy of the report (if it has not already done so under subsection (3)(a)(iii));
- (b) inform the person of its intention to publish the report; and
- (c) either—
  - (i) obtain the person's consent to publication of any part of the report from which the person or, if applicable, their testimony may be identified (whether directly or indirectly); or
  - (ii) where the person does not consent, only publish that part of the report in an anonymised or redacted form from which the person or, if applicable, their testimony cannot be identified (whether directly or indirectly).

(7) In any case where subsection (4) applies, the Commissioner must not publish the inspector's report until any appeal against the Commissioner's decision in respect of the contravention or to publish the report is finally decided or withdrawn or, if there is no appeal, when the period for appealing has expired.

#### **Costs of inspectors' reports. -**

112. (1) Subject to subsection (2) the costs reasonably and properly incurred by the Commissioner in producing an inspector's report, including all of the work reasonably and necessarily carried out by the inspector in the conduct of the investigation and the

preparation of the report must be borne by the licence holder or regulated individual to whom the report relates (in this section “Inspector Report Costs”).

(2) Where the Commissioner has appointed an inspector who is not a Commissioner’s staff, any person who is required to bear the Inspector Report Costs or part thereof, may apply to the Supreme Court for an order–

(i) that the Commissioner’s decision to appoint an inspector who is not a Commissioner’s staff was not proportionate as required by section 108(3); and/or

(ii) that the Inspector Report Costs are not reasonable and proportionate; and

(iii) that the Commissioner should pay a part, to be determined by the court but not exceeding 50%, of the Inspector Report Costs.

(3) Where the Commissioner has appointed an inspector who is a Commissioner’s staff the Inspector Report Costs shall include the cost of the inspector’s time calculated on an hourly basis at the hourly cost to the Commissioner or that person’s employer of employing that person, as certified by the Commissioner in writing.

(4) In deciding whether to make an order under subsection (2), and if so, what proportion of the Inspector Report Cost should be borne by the Commissioner, the court must have regard to the following factors-

(a) the reasonableness and proportionality of the Inspector Report Costs;

(b) the reasonableness of any decision of the Commissioner under section 108(3) to appoint an inspector who is not a Commissioner’s staff;

(c) the proportionality of imposing the requirement, taking account of the nature and gravity of the contravention of which the person suspected ; and

(d) whether it is just and equitable.

(5) An application under subsection (2) shall not have the effect of suspending the obligation of the person charged under subsection (1) to pay the Inspector Report Costs to the Commissioner.

### *Legal safeguards*

#### **Self-incrimination.**

113. A statement made by a person in compliance with any requirement imposed under this Part may be used in evidence in criminal proceedings against that person only if–

- (a) the person has introduced the statement in evidence; or
- (b) the proceedings concern the prosecution of the person for–
  - (i) failing or refusing to provide information, produce documents or give assistance in accordance with this Part;
  - (ii) omitting to disclose information which should have been disclosed; or
  - (iii) providing an untruthful statement.

#### **Legal privilege.**

114.(1) A person is not required to produce a document or disclose information under this Part if the person would be entitled to refuse to produce or disclose it on grounds of legal privilege in proceedings in the Supreme Court.

(2) In respect of a person who is a barrister or solicitor acting in their professional capacity–

- (a) the Commissioner may only–
  - (i) issue a notice to the person under 103(1); or
  - (ii) inspect the person’s premises under section 105; and
- (b) an inspector may only–
  - (i) examine the person under section 109; or
  - (ii) require the person under section 110 to supply any information or document,

in accordance with the terms of an order of the Supreme Court authorising the Commissioner or inspector (as the case may be) to do so.

(3) An application for an order under subsection (2) must be made by the Commissioner and a copy of the application notice must be served on the solicitor or barrister concerned.

### **Liens on documents.**

115. The production of a document under this Part does not affect any lien which a person may have in respect of the document and the existence of such a lien is not a valid reason for refusing to produce that document.

### **Appeals.**

116.(1) A person aggrieved has a right of appeal under section 146 against any of the following decisions–

- (a) a decision by the Commissioner –
  - (i) under section 103(1)(a) or (b) to require a person other than a licence holder or a regulated individual to provide specified information or information of a specified description, or produce specified documents or documents of a specified description; or
  - (ii) under section 103(1)(c) to require a person, other than a person specified in subsection (2), to attend before the Commissioner to answer questions or provide information;
  - (iii) under section 111(4) to publish an inspector's report;
  - (iv) to refuse to provide a copy of an inspector's report under section 111(3);
- (b) a decision by an inspector under section 109(1)(b) to investigate the affairs of any person other than the person whose affairs the inspector was appointed to investigate;
- (c) a decision by the Commissioner or an inspector requiring a person to produce a document or disclose information to which section 114(1) applies; or

(2) For the purposes of subsection (1)(a)(ii) the specified persons are–

- (a) a licence holder, former licence holder, regulated individual or former regulated individual;
- (b) a controller of a licence holder or former license holder ;



- (c) a director, manager or similar officer of a licence holder or former authorised person; or
- (d) an agent or employee of a licence holder or former licence holder .

### *Offences*

#### **Offences.**

117.(1) A person (“P”) commits an offence if–

- (a) P, without reasonable excuse–
  - (i) fails or refuses to comply with a requirement imposed under this Part; or
  - (ii) omits to disclose material which P should have disclosed in accordance with this Part;
- (b) P, in purported compliance with a requirement imposed under this Part–
  - (i) gives information or makes a statement which P knows to be false or misleading; or
  - (ii) recklessly gives information or makes a statement which is false or misleading; or
- (c) P knows or suspects that an investigation under this Part is being or is likely to be conducted and–

- (i) P falsifies, conceals, destroys or otherwise disposes of a document which P knows or suspects is or would be relevant to such an investigation; or
- (ii) P causes or permits the falsification, concealment, destruction or disposal of such a document.

(2) P does not commit an offence under subsection (1)(a) if the reason for P's failure or refusal to comply with a requirement or to disclose material is that—

- (a) P is prevented from doing so by an order of the court under this Part; or
- (b) P's obligation to do so is the subject of an appeal or other legal challenge before the courts.

(3) In any proceedings for an offence under subsection (1)(c), it is a defence for P to prove that P had no intention of concealing from the person conducting the investigation facts disclosed by the documents.

(4) A person who commits an offence under subsection (1) is liable—

- (a) on summary conviction, to imprisonment for six months, to the statutory maximum fine, or both;
- (b) on conviction on indictment, to imprisonment for two years or a fine, or both.

**PART 8**  
**COMMON SANCTIONING POWERS**

*Liability for contravention of regulatory requirement*

**Liability for contravention of regulatory requirement.**

118.(1) The Commissioner may exercise a sanctioning power against a person if—

- (a) the person contravened a regulatory requirement; and
- (b) at the time of the contravention, the person was—
  - (i) a licence holder ; or
  - (ii) a regulated individual.

(2) Whether a licence holder has complied with requirements imposed by or under this Act may also be relevant in determining whether—

- (a) the licence holder continues to satisfy the threshold condition in relation to all of the regulated activities for which the licence holder has a licence ; or
- (b) to vary or cancel the licence holder’s licence to carry on a regulated activity on the grounds that a condition specified in Schedule 2 is met in relation to that activity.

**Liability of regulated individual for licence holder’s contravention of regulatory requirement.**

119. The Commissioner may exercise a sanctioning power against a regulated individual in respect of a contravention of a regulatory requirement by a licence holder if–

- (a) the individual contravened the regulatory requirement or was knowingly concerned in that contravention; and
- (b) at the time of the contravention, the individual was a regulated individual at that licence holder .

### **Liability**

120.(1) In this Part a regulatory requirement means an obligation imposed on a person–

- (a) as a condition of being a licence holder;
- (b) under this Act or any regulations made under it; or
- (c) by the Commissioner or the Authority under this Act or any regulations made under it.

(2) This Part does not limit any other power the Commissioner or the Authority may have to investigate, supervise or sanction a person, under this Act or any other enactment.

121.(1) Regulations may modify how this Part applies in relation to different types of gambling businesses.

(2) In particular, regulations may–

- (a) add, delete or modify the regulatory requirements in respect of which sanctioning actions may be brought;

- (b) add, delete or modify sanctioning powers (including the size of an administrative penalty);
- (c) add, delete or modify the persons against whom sanctioning actions may be brought.

### *Sanctioning powers*

#### **Sanctioning powers.**

122.(1) The sanctioning powers are—

- (a) an administrative penalty;
- (b) a public statement;
- (c) a cease and desist order;
- (d) a temporary suspension of licence order;
- (e) a prohibition order.

(2) More than one sanctioning power may be exercised against a person in respect of the same contravention.

#### **Administrative penalties.**

123.(1) The Commissioner may impose an administrative penalty on a person in accordance with this section.

- (2) An administrative penalty is an amount of money that the person is liable to pay.
- (3) The amount is to be determined by the Commissioner, subject to any limit imposed by or under this Act.
- (4) The penalty must be paid within 28 days of the date on which the notice imposing it takes effect.
- (5) The Commissioner may extend the period within which the penalty must be paid.

- (6) A penalty imposed under subsection (1) on receipt by the Commissioner shall be paid into the Consolidated Fund. .

**Public statement.**

124.(1) The Commissioner may publish a statement limited to specifying–

- (a) the identity of a person who has contravened a regulatory requirement;
- (b) the type and nature of the contravention.

(2) The public statement may be in whatever form the Commissioner thinks fit, but must be appropriate, proportionate, balanced and fair.

**Cease and desist order.**

125.(1) The Commissioner may issue a cease and desist order against a person in accordance with this section.

(2) A cease and desist order obliges the person to–

- (a) cease any conduct which constitutes a contravention; and
- (b) desist from any repetition of that conduct.

**Temporary suspension of licence order.**

126.(1) The Commissioner may issue a temporary suspension of licence order against a licence holder in accordance with this section.

(2) A temporary suspension of licence order may–

(a) suspend the licence to carry on a regulated activity; or

(b) impose a limitation or other restriction in relation to the carrying on of a regulated activity.

(3) The order must not exceed 12 months.

(4) The order may relate only to the carrying on of an activity in specified circumstances.

(5) A restriction may, in particular, be imposed so as to require the person to take, or refrain from taking, specified action.

(6) The Commissioner may–

(a) withdraw an order; or

(b) vary an order, so as to reduce the period for which it has effect or otherwise limit its effect.

(7) The power under this section may (but need not) be exercised so as to have effect in relation to all the regulated activities that the person carries on.

### **Prohibition order.**

127.(1) The Commissioner may issue a prohibition order against an individual in accordance with this section.

(2) A prohibition order prohibits the individual from exercising regulated functions, within the meaning of Part 5, in a licence holder .

(3) The prohibition order must specify the period during which it has effect.

(4) The prohibition order must specify–

- (a) which regulated functions it applies in respect of, or
- (b) that it applies in respect of all regulated functions.

(5) If the prohibition order is in response to repeated contraventions, it may have effect for an indefinite period.

### *Sanctioning actions*

#### **Sanctioning actions.**

128. Sections 129 to 133 apply where the Commissioner takes a sanctioning action by exercising a sanctioning power.

#### **Criteria for sanctioning actions.**

129.(1) The Commissioner must ensure that the type and level of any sanctioning action is reasonable, proportionate, effective and dissuasive, taking account of all relevant circumstances, including where appropriate–

- (a) the gravity and the duration of the contravention;



- (b) the degree of responsibility of the person against whom the sanctioning power is being exercised;
- (c) the financial strength of the person, for example as indicated by turnover or annual income;
- (d) in so far as they can be determined—
  - (i) the importance of the profits gained or losses avoided by virtue of the contravention;
  - (ii) the losses sustained by others as a result of the contravention;
  - (iii) where applicable, the damage to the functioning of markets or the wider economy;
  - (iv) the prejudice caused to the gambling regulatory objectives.
- (e) the level of cooperation with the Commissioner by the person;
- (f) previous contraventions by the person;
- (g) measures taken after the contravention by the person to prevent its repetition;  
and
- (h) whether the person has complied with guidance relevant to the subject matter of the contravention.

(2) The Commissioner must issue, and may from time to time revise, a guide setting out—

- (a) how it will exercise its sanctioning powers;

(b) aggravating and mitigating factors it will take into account (which may be in addition to the criteria set out in subsection (1));

(c) how the Commissioner will determine the level of administrative penalties.

(3) The guide must not be issued unless it has first been approved by the Minister.

(4) The Commissioner must have regard to the guide before exercising its sanctioning powers.

#### **Notice procedure and appeals.**

130.(1) Where the Commissioner –

(a) proposes to take a sanctioning action, it must give the person concerned a warning notice; or

(b) decides to take a sanctioning action, it must give the person concerned a decision notice.

(2) A person aggrieved by a decision notice under subsection (1)(b) may appeal under section 146.

#### **Dispensing with a warning notice: sanctions in urgent cases.**

131.(1) Section 130(1)(a) does not apply if all of conditions A to D are met in relation to a person (“P”).

(2) Condition A is that the Commissioner is considering whether to exercise a sanctioning power in relation to P.

(3) Condition B is that the Commissioner, having regard to the ground on which it is considering exercising the sanctioning power in question, reasonably considers that there is an immediate risk of substantial damage to—

(a) the interests of consumers;

(b) the public interest; or

(c) the reputation of Gibraltar.

(4) Condition C is that the Commissioner reasonably considers that—

(a) the issuing of a warning notice would, to a material extent, be likely to increase the damage referred to in subsection (3) or the extent of such damage; and

(b) dispensing with the issue of a warning notice would be proportionate to the achievement of that objective having regard, in particular, to the adverse consequences for the licence holder that may result from the proposed sanctioning action.

(5) Condition D is that the Commissioner gives P a notice which states that the sanctioning action takes effect on the date of the notice or on such later date as may be specified in the notice.

(6) The sanctioning action takes effect on the date specified in the notice under subsection (5).

(7) A notice under subsection (5) must—

- (a) give details of the sanctioning action;
- (b) identify which of the grounds specified in subsection (3) the Commissioner is relying on and how that ground is engaged;
- (c) state the Commissioner's reasons for taking the sanctioning action;
- (d) specify why the Commissioner considers that the requirements of each of paragraphs (a) and (b) of subsection (4) is met;
- (e) inform P that P may make representations to the Commissioner within such period as may be specified in the notice;
- (f) inform P of when the sanctioning action takes effect;
- (g) inform P of the right to make an application under sub-section (9); and
- (h) indicate the procedure to be followed in making any such application.

(8) The Commissioner may extend the period allowed under the notice for making representations.

(9) The Supreme Court may, on an application made to it by P of which not less than two working days' notice has been given to the Commissioner –

- (a) direct the Commissioner to revoke any sanctioning action taken by the Commissioner without issuing a warning notice; or
- (b) quash or vary any such sanctioning action,

if the Court considers that it was not reasonable, proportionate or appropriate for the Commissioner to have taken the action without issuing a warning notice.

(10) If, having considered any representations made by P, the Commissioner decides not to revoke the sanctioning action, the Commissioner must give P another notice which informs P of the right to appeal under section 146 against the decision to take that action.

(11) If, having considered, any representations made by P, the Commissioner decides—

- (a) to make any changes to the particular sanctioning action taken;
- (b) to substitute a different sanctioning action; or
- (c) to revoke a sanctioning action which has effect,

the Commissioner must give P another notice.

(12) A notice under subsection (11)(a) or (b) must—

- (a) give details of the Commissioner's decision;
- (b) state the Commissioner's reasons for taking it;
- (c) inform P that P may make representations to the Commissioner within such period as may be specified in the notice;
- (e) inform P of when the sanctioning action takes effect; and
- (d) inform P of P's right to appeal under section 146 against the decision.

(13) A notice informing P of P's right of appeal must give an indication of the procedure to be followed in making an appeal.

#### **Administrative penalty a civil debt.**

132. An administrative penalty may be enforced as if it were a civil debt owed to the Commissioner.

#### **Revocation or variation of prohibition order.**

133.(1) An individual subject to a prohibition order may apply to the Commissioner to—

(a) vary the prohibition order;

(b) revoke the prohibition order.

(2) The Commissioner must, before the end of the period for consideration—

(a) grant the application; or

(b) give a warning notice stating why it proposes not to grant the application.

(3) The “period for consideration” means the period of three months beginning with the date on which the Commissioner receives the application.

(4) A warning notice—

(a) must give the recipient not less than 28 days to make representations; and

(b) must specify a period within which the recipient may decide whether to make oral representations.

(5) The period for making representations may be extended by the Commissioner.

(6) After considering any representations made the Commissioner must issue—

(a) a decision notice stating that the Commissioner will refuse the application; or

(b) an acceptance notice stating that the Commissioner will accept the application.

(7) An application made by an individual has no effect if it is made within one year of the Commissioner giving a warning notice in respect of a previous application by that individual.

(8) A decision notice under this section takes effect immediately.

### *Transitional and savings*

#### **Transitional and savings.**

134.(1) This section applies in respect of a contravention of a regulatory requirement in a repealed enactment.

(2) If a sanctioning action has been commenced in respect of that contravention before the repealed enactment is repealed or revoked, that sanctioning is to continue according to the procedure set out in the repealed enactment.

(3) If a sanctioning action has not been commenced in respect of that contravention before the repealed enactment is repealed or revoked, any sanctioning is to be in accordance with the procedure set out in Part 10.

## **PART 9**

### **SPECIAL REMEDIES**

#### **Interpretation of Part 9.**

135. In this Part a “relevant requirement” means a requirement which is–

- (a) imposed by or under this Act; or
- (b) prescribed or of a prescribed description.

## **Injunctions.**

136.(1) If, on the application of the Commissioner, the Supreme Court is satisfied that—

- (a) there is a reasonable likelihood that a person will contravene a relevant requirement; or
- (b) a person has contravened a relevant requirement and there is a reasonable likelihood that the contravention will continue or be repeated,

the court may make an order restraining the contravention.

(2) If, on the application of the Commissioner, the Supreme Court is satisfied that a person (“P”) may have—

- (a) contravened a relevant requirement; or
- (b) been knowingly concerned in the contravention of a relevant requirement,

the court may make an order restraining P from disposing of, or otherwise dealing with, any of P’s assets which it is satisfied that P is reasonably likely to dispose of or otherwise deal with.

(3) If, on the application of the Commissioner, the Supreme Court is satisfied that—

- (a) a person (“P”) has—
  - (i) contravened a relevant requirement; or
  - (ii) been knowingly concerned in the contravention of a relevant requirement; and



- (b) there are steps which P could take to remedy the contravention or mitigate its effect,

the court may make an order requiring P to take such steps as the court may direct to remedy the contravention or mitigate its effect.

**Restitution orders.**

137.(1) The Supreme Court may make an order under subsection (2) if, on the application of the Commissioner, the court is satisfied that—

- (a) a person (“P”) has—
  - (i) contravened a relevant requirement; or
  - (ii) been knowingly concerned in the contravention of a relevant requirement; and
- (b) as a result of that contravention—
  - (i) profits have accrued to P; or
  - (ii) one or more persons have suffered loss or been otherwise adversely affected.

(2) The court may order P to pay to the Commissioner such sum as appears to the court to be just having regard—

- (a) in a case within subsection (1)(b)(i), to the profits appearing to the court to have accrued;

(b) in a case within subsection (1)(b)(ii), to the extent of the loss or other adverse effect; or

(c) in a case within both of those provisions, to the profits appearing to the court to have accrued and to the extent of the loss or other adverse effect.

(3) Subject to subsection (4), any amount paid to the Commissioner in accordance with an order made under subsection (2) must be paid by the Commissioner to the persons that the court may direct, being the persons appearing to the court—

(a) to whom the profits mentioned in subsection (1)(b)(i) are attributable; or

(b) who have suffered the loss or adverse effect mentioned in subsection (1)(b)(ii).

(4) The Commissioner may deduct from any amount paid to him under this section a sum which represents the direct costs to the Commissioner of, and a reasonable share of expenditure by the Commissioner which is indirectly referable to –

(a) the investigation by the Commissioner leading to the application for the restitution order;

(b) the enforcement of the restitution order; and

(c) the Commissioner's unrecoverable and unrecovered legal costs.

(5) On an application under subsection (1) the court may require P to provide it with any accounts or other information that it may require for the purposes of—

(a) establishing whether any and, if so, what profits have accrued to P;

(b) establishing whether any person has suffered a loss or adverse effect and, if so, the extent of that loss or adverse effect; and

(c) determining how any amount is to be paid under subsection (3).

(6) The court may require any accounts or other information provided under subsection (5) to be verified in the manner that it may direct.

(7) Nothing in this section affects the right of any person other than the Commissioner to bring proceedings in respect of the matters to which this section applies.

## PART 10

### NOTICE PROCEDURE AND PUBLICATION

#### *Notices*

#### **Warning notice.**

138.(1) A warning notice must—

- (a) be in writing;
- (b) contain any information that the provision under which it is given requires to be included in a warning notice;
- (c) state the action which the decision-maker proposes to take; and
- (d) give reasons for proposing to take it.

(2) A warning notice—

- (a) must give the recipient not less than 28 days to make representations to the decision-maker ; and
- (b) must specify a period of not less than 14 days within which the recipient may decide whether to make oral representations.

(3) The decision-maker must also disclose to the person concerned the evidence on which the decision-maker's decision to give the warning notice was based.

(4) Subsection (3) does not require the decision-maker to provide the person concerned with a copy of any application, document or other information which the person concerned submitted to the decision-maker in relation to the decision in question.

(5) The decision-maker may extend the period specified in the notice for making representations.

**Decision notices.**

139.(1) This section applies where the decision-maker has issued a warning notice.

(2) After considering any representations made in accordance with section 138, the decision-maker must within a reasonable period issue—

- (a) a decision notice stating that the decision-maker will take the proposed action;
- (b) a discontinuance notice stating that the decision-maker will not take the proposed action; or
- (c) a notice comprising a combination of—
  - (i) a decision notice stating that the decision-maker will take certain proposed action and or certain of the proposed action modified in such manner as shall not be more onerous or adverse to recipient of the decision notice than the proposed action; and
  - (ii) a discontinuance notice in respect of the remaining proposed action.

(3) A decision notice or discontinuance notice must—

- (a) be in writing;

- (b) contain any information that the provision under which it is given requires to be included in such a notice;
- (c) state the proposed action and the reasons for taking or not taking it, as the case may be; and
- (d) inform the recipient of any right of appeal under section 146.

(4) The decision-maker need not issue a discontinuance notice if–

- (a) the proposed action was to refuse an application made to the decision-maker ; and
- (b) the decision-maker has decided to grant that application and has informed the applicant of that decision.

(5) A decision notice takes effect–

- (a) immediately or on the date stated in it, if the provision under which it is given so provides or permits or it is a decision notice to which subsection (4) applies; or
- (b) in any other case, at the end of the period specified in section 146(2) within which an appeal may be made or, if an appeal is made, when the appeal and any further appeal is finally determined or withdrawn.

#### *Interim orders*

#### **Interim orders.**

140.(1) Where a decision notice has been issued but has not yet taken effect, the decision-maker may apply to the Supreme Court for an order–

- (a) giving immediate effect to the notice; or
- (b) giving effect to the notice or a specified part of it, on a specified date or for specified purposes.

(2) No order may be made under subsection (1) unless the decision-maker has—

- (a) given reasonable notice of the application to the recipient of the notice; or
- (b) if the matter is urgent, given at least two days' notice of the application to the recipient of the notice.

(3) The Court may not make an order under subsection (1) which allows the Commissioner to take the sanctioning action of publishing a statement under section 141.

### *Publication of sanctions*

#### **Publication of sanctioning action.**

141.(1) Subject to section 142, the Commissioner may publish on its website only details of any sanctioning action taken under this Act in respect of a contravention of a regulatory requirement.

(2) Publication must be made without undue delay after the person concerned has been informed of the decision.

(3) The information published must be limited to—

- (a) the identity of the person against whom the action has been taken; and
- (b) the type and nature of the contravention.

(4) The Commissioner must ensure that any publication is of proportionate duration and remains on its website for not more than two years or, if longer, the period during which any sanction imposed applies (and, for the purposes of publication, a sanction which is imposed without a specific duration is to be regarded as having a duration of three years).

(5) The Commissioner must ensure that personal data is only retained on the website for so long as is necessary, in accordance with the data protection legislation.

**Restrictions on publication.**

142.(1) The Commissioner must take one of the steps in subsection (2) where–

- (a) following an obligatory prior assessment, it considers that it would be disproportionately unfair or prejudicial (taking into account both the gambling regulatory objectives and the effect on the person or persons concerned) to publish the identity of the person, or personal data of an individual or details of a sanctioning action from which such person could be directly, indirectly or through related common knowledge in Gibraltar identified;
- (b) it considers that publication would jeopardise the stability of gambling markets, an ongoing investigation or a gambling regulatory objective ; or
- (c) it considers that the public interest does not require publication or that it should not publish for any other good reason.

(2) Those steps are–

- (a) to defer publication until the reasons for non-publication cease to exist;
- (b) to publish on an anonymous basis; or
- (c) not to publish.

(3) The Commissioner may not publish the fact or details of a sanctioning action during the period specified in section 146(2) during which an appeal may be made or, if an appeal is made, until the appeal and any further appeal is finally determined or withdrawn.

**Limited publication while appeal is pending.**

143.(1) Section 141 does not apply while an appeal could be brought or is pending.

(2) But the Commissioner may apply to the Supreme Court for permission to publish a decision which is or may be subject to an appeal, if—

- (a) under the provisions of this Act the decision takes effect prior to the expiry of the period for bringing an appeal against it and the final determination of that appeal; and
- (b) the publication of the decision is necessary to protect the interests of consumers.

(3) An application under subsection (2) must not be made without the written consent of the Minister as to both the making of the application and the text of the proposed publication.

(4) The Commissioner must give every person who is referred to in a decision which is the subject of an application under subsection (2) at least two working days' notice of the application.

(5) The Court may not give permission under subsection (2) unless the Court is satisfied that the criteria in that subsection are met.

(6) Any information published—

- (a) must be limited to—
  - (i) the identity of the person against whom the action has been taken; and
  - (ii) the type and nature of the contravention; and
- (b) must include a statement which—
  - (i) states that the decision may be the subject of an appeal and the time in which any appeal must be made; or



- (ii) confirms whether it is the subject of an appeal.

(7) The Commissioner must amend any information published—

- (a) if an appeal is submitted after its initial publication; or
- (b) to reflect the outcome of any appeal.

### *Service*

#### **Service of notices and documents.**

144.(1) Any notice or other document to be served by or on behalf of the Authority or the Commissioner (as the case may be) under or in connection with this Act is validly served on the recipient if—

- (a) in the case of an individual, it is delivered to the individual, or left or sent by recorded delivery service addressed to the individual, at the individual's usual or last known business or home address;
- (b) in the case of an unincorporated body, it is delivered to any partner, manager or other similar officer of that body, or is left at, or sent by recorded delivery service to the last known place of business of that body;
- (c) in the case of a body corporate, it is left at, or sent by recorded delivery service to its registered office in Gibraltar or, if its registered office is not in Gibraltar, its last known place of business in Gibraltar; or
- (d) in the case of any other person, it is left at or sent by recorded delivery service to the address in Gibraltar notified by the person to the Authority or the Commissioner (as the case may be) for the service of notices or other documents.

(2) Subsection (1) applies without limiting any other method of service adopted by the Authority or the Commissioner.

## **PART 11**

### **APPEALS**

#### *Gambling Appeals Tribunal*

145.(1) There is hereby established the Gambling Appeals Tribunal.

(2) The function of the Gambling Appeals Tribunal is to hear and determine appeals from any decision made by the Authority or the Commissioner, where a right of appeal against such decision is bestowed by this Act.

(3) The provisions of Schedule 6 shall apply to and in respect of the Gambling Appeals Tribunal.

#### *Appeals*

##### **Appeals.**

146.(1) A person aggrieved by a decision notice other than one to which section 147 applies may appeal to the Gambling Appeals Tribunal.

(2) An appeal must be made within 28 days of the date on which the decision notice is served on the recipient by the Authority or the Commissioner (as the case may be).

(3) The Gambling Appeals Tribunal may allow an appeal to be made outside the time set out in subsection (2) in exceptional circumstances, if the tribunal considers that it would be unjust not to do so.

(4) The Gambling Appeals Tribunal may–

- (a) dismiss the appeal;
- (b) allow the appeal and quash the decision appealed against; or
- (c) remit the matter to the Authority or the Commissioner (as the case may be) for further consideration, in accordance with any directions of the tribunal.

(5) The tribunal may make any order as to the costs of an appeal as it considers appropriate.

(6) An appeal does not have the effect of staying a decision notice which under the provisions of this Act takes effect immediately, but the tribunal may in its discretion grant a stay or other relief in respect of such a notice until the appeal has been determined.

147. (1) There is no right of appeal against a decision notice–

- (a) refusing an application for a licence under Part 4;
- (b) under section 50(2)(c);
- (c) under section 93(7) to approve an acquisition subject to conditions or to object to an acquisition.
- (d) under section 95 objecting to existing control.

### **Further appeal to the Court.**

148.(1) A further right of appeal lies from a decision of the Gambling Appeals Tribunal to the Supreme Court on a point of law only.

(2) The court may–

- (a) dismiss the appeal;
  - (b) allow the appeal and remit the matter to the Authority or the Commissioner (as the case may be) for further consideration in accordance with any directions of the court on points of law.
- (3) The court may make any order as to the costs of an appeal as it considers appropriate.

## PART 12

### CONFIDENTIALITY AND COOPERATION

#### *Interpretation*

#### **Interpretation of Part 12.**

149.(1) In this Part—

“confidential information” means information in any form which—

- (a) has been obtained by or on behalf of the Authority or the Commissioner in the course of carrying out their functions and from which a person can be identified;  
or
- (b) the Government has provided in confidence to the Authority or the Commissioner;

“domestic authority” means a person listed in Schedule 7;

“foreign authority” means a person performing functions similar to those of a domestic authority, under the law of a country or territory outside Gibraltar; and

“foreign regulator” means a person performing functions similar to those of the Authority or the Commissioner, under the law of a country or territory outside Gibraltar.

(2) For the purpose of this Part a “relevant person” means—

- (a) any person who is –
  - (i) a licence holder;
  - (ii) a regulated person; or
  - (iii) applying to be a licence holder or a regulated person;
- (b) any director, officer or senior manager of a person in paragraph (a);
- (c) any person who is or at any time was directly or indirectly employed (whether or not under a contract of service) by a person in paragraph (a) or (b);
- (d) any person who is seeking to obtain, has or at any time had any direct or indirect proprietary, financial or other interest in or connection with a person in paragraph (a) or (b); or
- (e) any person who is, or has been, directly or indirectly involved in a transaction which the Authority or the Commissioner considers to be relevant to the discharge of his functions under this Act.

*Confidential information*

**Use of confidential information.**

150.(1) The Authority and the Commissioner may disclose confidential information only to the extent that doing so appears to them to be necessary—

- (a) for the purpose of facilitating the carrying out of a function conferred on him by or under this Act or any other enactment; or
- (b) for the purpose of facilitating the carrying out of a similar function by a foreign regulator;
- (c) for the prevention or detection of crime or the prosecution of offenders;
- (d) for the purpose of assisting a domestic authority in carrying out of its functions;
- (e) with the consent of the Minister, for the purpose of assisting a foreign authority in carrying out of its functions;

- (f) in connection with the discharge of any international obligation to which Gibraltar is subject;
- (g) for the purpose of facilitating the supervision on a consolidated basis of a relevant person in section 149(2)(a);
- (h) for the purpose of assisting any person responsible for—
  - (i) conducting statutory audits of relevant persons in section 149(2)(a);
  - (ii) conducting insolvency and similar procedures in respect of relevant persons in section 149(2)(a); or
  - (iii) the detection and investigation of breaches of Gibraltar company law.

(2) The restriction imposed by subsection (1) also applies to the disclosure of any confidential information by—

- (a) any person who is or has been—
  - (i) an officer in the office of the Authority or a member of the Commissioner's staff; or
  - (ii) engaged to provide services to the Authority or the Commissioner; or
- (b) any auditor, actuary or expert who is or has been instructed by the Authority or the Commissioner.

(3) Subsections (1) and (2) do not prevent confidential information from being disclosed—

- (a) with the consent of the person to whom it relates;
- (b) in summary or aggregate form, from which information relating to any particular person cannot be ascertained;
- (c) for the purpose of any proceedings under this Act;

- (d) by direction of the Supreme Court; or
- (e) if it is a matter of public knowledge and was made available to the public in circumstances or for purposes which are not precluded by this Part.

**Cooperation agreements.**

151. The Authority and or the Commissioner, with the consent of the Minister, may conclude cooperation agreements with domestic authorities and foreign regulators, establishing procedures for the exchange of information in accordance with this Part.

*Exchanging information with other authorities*

**Cooperation with other authorities.**

152.(1) Subject to section 150, the Authority and the Commissioner may assist, exchange information or cooperate with—

- (a) a domestic authority;
- (b) a foreign regulator; or
- (c) with the consent of the Minister, a foreign authority,

for the purposes of any investigation or supervisory activity being undertaken by the Commissioner or similar activity being undertaken by the authority or regulator.

(2) The Authority and the Commissioner, when he provides information to an authority or regulator under subsection (1), may require it—

- (a) to use the information only for the purposes for which the information has been provided; and
- (b) not to disclose the information without the express agreement of the Authority or the Commissioner (as the case may be).

(3) The Authority and the Commissioner–

- (a) must not disclose information which he has received under subsection (1) to any other person without the express agreement of the authority or regulator that provided it; and
- (b) must use the information only for the purposes for which it was provided, other than in justified circumstances (of which it must immediately inform the disclosing authority or regulator).

(4) Where the Commissioner reasonably suspects that this Act or any provision made under it has been contravened by a person who is not subject to supervision by the Commissioner, but is subject to supervision by a foreign regulator, the Commissioner must inform the foreign regulator without delay, in as specific a manner as possible.

(5) Where a foreign regulator informs the Commissioner of a suspected contravention of this Act or any provision made under it, the Commissioner must take appropriate action and inform the foreign regulator of the outcome of the action, including (to the extent possible) any significant interim developments.

(6) The Authority and the Commissioner may cooperate with a domestic authority, foreign regulator or foreign authority under this section even in cases where the conduct under investigation would not constitute a contravention of this Act or any provision made under it.

**Refusing to share information.**

153. The Authority and the Commissioner may refuse to exchange information under section 152 if he is not satisfied that the person or body requesting the information is subject to confidentiality provisions which are at least equivalent to those in section 150.

*Provision of assistance to other regulators*

**Providing assistance to other regulators.**

154.(1) At the request of a foreign regulator which is responsible for supervising or regulating a relevant person or any part of a group to which a relevant person in section



149(2)(a) belongs, the Commissioner for the purpose of assisting the foreign regulator to discharge a relevant function, may—

- (a) exercise its powers under Part 7; or
- (b) arrange for those powers to be exercised with the consent of the Minister by—
  - (i) a person authorised by the Commissioner for that purpose; or
  - (ii) subject to any conditions the Commissioner considers appropriate, a person acting on behalf of the requesting foreign regulator.

(2) For the purposes of subsection (1), a “relevant function” means a function of the requesting foreign regulator which is similar to a function of the Commissioner.

**Refusing to provide assistance.**

155.(1) The Commissioner may refuse to act on a request for assistance from a foreign regulator—

- (a) where the request is not made in accordance with any cooperation agreement or similar arrangement between the Authority or the Commissioner and the requesting foreign regulator;
- (b) where, in Gibraltar, in respect of the same person and the same action—
  - (i) criminal proceedings have been initiated or a criminal penalty has been imposed; or
  - (ii) an administrative sanction has been imposed under this Act,

unless the requesting foreign regulator can show that the relief or sanction sought in any proceedings it has initiated or proposes to initiate is of a different nature to that sought or obtained in Gibraltar; or

- (c) on grounds of public interest or essential national interest as declared in writing by the Minister.

(2) Where the Commissioner refuses to provide the assistance requested or is unable to do so, it must inform the requesting foreign regulator and provide it with the reasons for the decision.

#### **Transitional Provision.**

156. The Authority and the Commissioner may exercise the powers to share information under this Part in respect of any information obtained by the Authority or the Commissioner under a repealed enactment.

### **PART 13**

#### **ADDITIONAL REGULATION-MAKING POWERS.**

##### **General regulations.**

157.(1) The Minister may make such regulations for the purposes of this Act as appear to the Minister to be necessary or expedient for the purposes of advancing one or more of the gambling regulatory objectives.

(2) Regulations made under subsection (1) may apply to –

- (a) licence holders ;
- (b) regulated persons;
- (c) with respect to the carrying on by them of–

- (i) regulated activities; or
- (ii) with respect to the carrying on by them of activities which are not regulated activities or regulated functions;

(3) Regulations made under subsection (1) are referred to in this Act as “general regulations”.

(4) General regulations may make provision applying to any person even though there is no relationship between the person to whom the regulations will apply and the persons whose interests will be protected by the regulations.

(5) General regulations may contain requirements which take into account, in the case of any person who is a member of a group, any activity of another member of the group.

**General regulations: supplementary.**

158.(1) General regulations may, in particular, make provision as to—

- (a) prudential standards;
- (b) systems and controls;
- (c) business standards;
- (d) regulatory processes;
- (e) complaints processes and procedures;
- (f) accounting and record keeping requirements;
- (g) responsible gambling;

(h) minimum age for gambling (and different ages may be established for different forms of gambling);

(i) advertising and marketing of gambling;

(j) the supply and procurement of gambling software;

(k) gambling machines;

(l) particular provisions applicable to specific forms of gambling or regulated activities;

(m) customer funds

(2) Regulations under subsection (1) which apply to any person within section 149(2) may include provision—

(a) for the purposes of implementing technical standards to be met by the person;

(b) imposing requirements on the person to report to the Commissioner about matters of a specified description or in specified circumstances; and

(c) about the disclosure and use of information held by the person (“control of information regulations”).

(3) Regulations under subsection (1) which apply to licence holders may also include provision—

(a) conferring rights on persons to rescind agreements with, or withdraw offers to, licence holders within a specified period;

(a) in respect of licence holders and persons exercising rights referred to in paragraph (a), for the restitution of property and the making or recovery of payments where those rights are exercised; and

(b) in connection with advertising, unsolicited communications or other promotions made by or on behalf of licence holders .

(4) Control of information regulations may–

- (a) require the withholding of information which a person (“A”) would otherwise be required to disclose to a person (“B”) for or with whom A does business in the course of carrying on any activity;
- (b) specify circumstances in which A may withhold information which A would otherwise be required to disclose to B;
- (c) require A not to use for the benefit of B information–
  - (i) which is held by A; and
  - (ii) which A would otherwise be required to use for the benefit of B;
- (c) specify circumstances in which A may decide not to use for the benefit of B information within paragraph (c).

(5) “Specified” means specified in general regulations.

#### **Fees regulations.**

159.(1) The Minister may make regulations providing for the payment to the Authority or the Commissioner or the Government of such fees as may be specified in the regulations in connection with the exercise of any of the Authority’s or the Commissioner’s functions under or as a result of this Act.

(2) Regulations under subsection (1) may, in particular–

- (a) provide for the determination of any fee in accordance with a specified scale or other specified factors;

- (b) make provision as to the persons by whom, and the time or intervals at which any fee is to be payable; or
- (c) provide for the fee not to be charged, or to be waived in whole or in part, in prescribed cases or circumstances.

(3) Anything made or done in respect of which a fee is payable by virtue of regulations made under subsection (1) is not to be regarded as duly made or done if the fee is not paid as required by the regulations.

(4) Any fee which is owed to the Authority, the Commissioner or the Government (as the case may be) under any provision made payable under this section may be enforced as a civil debt owed to the person or entity to which it is payable.

### **Licensing regulations**

160.(1) The Minister may make regulations providing for the process and requirements relating to the application for and issue of licences or approvals under this Act.

(2) Regulations under subsection (1) may include provisions for, in particular—

- (a) the form and manner in which applications are to be made;
- (b) the information and documents that must be provided in support of an application;
- (c) the requirement for additional documents and information;
- (d) when an application shall be deemed to be complete;
- (e) providing time limits for the submission of a complete application, and the lapsing of an incomplete application;
- (f) the manner in which applications must be considered;
- (g) the fees payable upon submission of an application;
- (h) additional fees payable following submission of an application and before its further consideration;
- (i) matters to be taken into account in the consideration of the application;
- (j) the duration of licences; and
- (k) the renewal of licences.

### **Penalty regulations.**

161.(1) The Minister may by regulations provide for penalties payable in respect of contraventions of such provision of or made under this Act as are specified in the regulations.

(2) Regulations under subsection (1)–

- (a) must identify each provision of or made this Act in relation to a contravention of which a penalty is to be payable;
- (b) must specify the amount of each penalty;
- (c) may specify a fixed amount, an amount calculated by reference to a rate that depends on the period during which the contravention continues or a combination of a fixed amount and an amount calculated by reference to a periodic rate;
- (d) may specify the maximum amount of any penalty calculated by reference to a periodic rate that may be imposed; and
- (e) may specify a penalty calculated by reference to a percentage, proportion or multiple of the benefit derived, or loss suffered, by a person from a contravention.

(3) The limitation in section 23(b) of the Interpretation and General Clauses Act does not apply to a penalty provided for in regulations made under this section.

**General power to make further provision by regulations.**

162.(1) The Minister may by regulations make any supplementary, incidental, consequential, transitory, transitional or saving provision which the Minister considers necessary or expedient for the purposes of, or in consequence of, or for giving full effect to any provision of this Act.

(2) Regulations under this section may in particular amend, repeal or revoke any enactment other than one contained in an Act or instrument passed or made after this Act is passed.

(3) Regulations under this section may make different provision for different purposes.

### *Supplementary*

#### **Effects on other regulation-making powers in this Act.**

163. The powers to make regulations which are conferred by this Part are in addition to the regulation-making powers which are set out in any other Parts.

## **PART 14**

### **OFFENCES**

#### *General provisions relating to all offences*

#### **Offences by bodies corporate, etc.**

164.(1) Where an offence under this Act—

- (a) is committed by or for the benefit of—
  - (i) a body corporate;
  - (ii) a partnership; or



(iii) an unincorporated body (other than a partnership); and

(b) is proved—

(i) to have been committed with the consent or connivance of an officer; or

(ii) to be attributable to any neglect on the part of an officer,

the officer, as well as the body corporate; partnership, or unincorporated body (as the case may be), commits the offence and is liable to be proceeded against and punished accordingly.

(2) In subsection (1) “officer” means—

(a) in respect of a body corporate—

(i) a director, manager, secretary or other officer; or

(ii) where the affairs of the body are managed by its members, a member;

(b) in respect of a partnership, a partner;

(c) in respect of an unincorporated body—

(i) an officer of that body; or

(ii) a member of its governing body; or

(d) any person purporting to act in a capacity within any of paragraphs (a) to (c).

### **Proceedings against unincorporated bodies.**

165.(1) Proceedings against an unincorporated body for an offence under this Act must be brought in the name of the unincorporated body and in any proceedings–

- (a) the following provisions of the Criminal Procedure and Evidence Act 2011 apply as if an unincorporated body was a corporation–
  - (i) section 178 (representatives of corporations);
  - (ii) section 179 (sending for trial of a corporation);
  - (iii) section 197(5)(a) (sending for trial of corporations);
  - (iv) section 217(5) (which concerns the committal for sentence of a corporation convicted of an offence triable either way);
  - (v) section 296 (pleas by corporations);
  - (vi) section 702 (service of documents); and
- (b) any rules of court related to the service of documents apply as if an unincorporated body was a corporation.

(2) A fine imposed on an unincorporated body is to be paid out of the funds of that unincorporated body.

### **Costs of investigation following conviction.**

166. A person who is convicted of an offence in proceedings instituted as a result of an investigation under this Act may, at the discretion of the court, in the same proceedings be ordered to pay all or part of the expenses incurred by the Authority or the Commissioner in conducting the investigation.

*Offences involving cheating, misleading statements or misleading the Authority or the Commissioner*

**Cheating**

167 (1) A person commits an offence if he—

- (a) cheats at gambling, or
- (b) does anything for the purpose of enabling or assisting another person to cheat at gambling.

(2) For the purposes of subsection (1) it is immaterial whether a person who cheats—

- (a) improves his chances of winning anything, or
- (b) wins anything.

(3) Without prejudice to the generality of subsection (1) cheating at gambling may, in particular, consist of actual or attempted deception or interference in connection with—

- (a) the process by which gambling is conducted, or
- (b) a real or virtual game, race or other event or process to which gambling relates.

(4) A person guilty of an offence under this section shall be liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding two years, to a fine or to both, or
- (b) on summary conviction, to imprisonment for a term not exceeding 52 weeks, to a fine not exceeding the statutory maximum or to both.

**Misleading statements.**

168.(1) Subsection (2) applies to a person (“P”) who–

- (a) makes a statement which P knows to be false or misleading in a material respect;
- (b) makes a statement which is false or misleading in a material respect, being reckless as to whether it is; or
- (c) dishonestly conceals any material facts whether in connection with a statement made by P or otherwise.

(2) P commits an offence if P makes the statement or conceals the facts with the intention of inducing, or is reckless as to whether making it or concealing them may induce, another person (whether or not the person to whom the statement is made) to enter into, or refrain from entering or offering to enter into, a relevant agreement,

(3) Subsections (1) and (2) do not apply unless–

- (a) the statement is made in or from, or the facts are concealed in or from, Gibraltar or arrangements are made in or from Gibraltar for the statement to be made or the facts to be concealed;
- (b) the person on whom the inducement is intended to or may have effect is in Gibraltar; or
- (c) the agreement is or would be entered into or the rights are or would be exercised in Gibraltar.

(4) “Relevant agreement” means an agreement the entering into or performance of which by either party constitutes the carrying on of a regulated activity.

### **Misleading the Authority or the Commissioner.**

169.(1) A person who, in purported compliance with any requirement imposed by or under this Act, knowingly or recklessly gives the Authority or the Commissioner information which is false or misleading in a material particular commits an offence.

(2) Subsection (1) only applies to a requirement in relation to which no other provision of this Act creates an offence in connection with the giving of information.

### **Penalties.**

170. A person who commits an offence under this Part is liable—

- (a) on summary conviction, to imprisonment for six months or a fine at level 5 on the standard scale, or both; or
- (b) on conviction on indictment, to imprisonment for two years or a fine, or both.

### **Proceedings for offences.**

171. Proceedings for an offence under sections 168 or 169 may only be instituted by or with the consent of the Director of Public Prosecutions.

## **PART 15**

### **FINAL PROVISIONS**

#### *Immunity*

### **Immunity.**

172. (1) The Authority, the Commissioner and the members of the Gambling Appeals Tribunal are not liable in damages for anything done or omitted in the discharge or purported discharge of any powers or functions conferred on them or any of them by this or any other Act.

(2) Any person who is an officer or employee of the Minister's office or a person who is a Commissioner's staff or to whom the Commissioner has delegated a function under this Act is

not liable in damages for anything done or omitted in the discharge or purported discharge of any powers or functions conferred on the Minister, the Authority or the Commissioner by this or any other Act.

(3) Subsections (1) and (2) do not apply to an act or omission which is shown to have been in bad faith.

(4) The Government must (unless bad faith is definitively found to have existed) indemnify the Minister, the Authority, the Commissioner, the members of the Gambling Appeals Tribunal and any person such as is or has been a person referred to in subsection (2) for the costs of defending any action brought by a third party in respect of anything they are alleged to have done or omitted in the discharge or purported discharge of any powers or functions conferred on the Minister, the Authority, the Commissioner or the Gambling Appeals Tribunal by this or any other Act.

#### **Data protection.**

173.(1) The processing of personal data for any purpose under this Act must be undertaken in accordance with the data protection legislation.

(2) Subsection (1) applies without affecting any provision of this Act which imposes specific requirements in respect of the processing of personal data for specific purposes to the extent that those requirements are consistent with the data protection legislation.

#### **Validity of gaming contracts and security for winnings**

174.(1) Section 18 of the Gaming Act 1845 (which renders wagering contracts unenforceable) shall not form part of the law of Gibraltar.

(2) The following enactments of the Parliament of the United Kingdom shall not form part of the law of Gibraltar—

(a) section 1 of the Gaming Act 1710 (which renders void securities given for money won by gaming or for the repayment of money lent for gaming); and

(b) section 1 of the Gaming Act 1835 (which provides that securities rendered void by the Gaming Act 1710 shall be deemed to be given for illegal consideration).

### **Exemption from Shop Hours Act**

175. The Shop Hours Act shall not apply in respect of any premises covered by a licence that authorises bookmaking, gaming or remote gambling.

### **Continuity of the law.**

176.(1) The substitution of this Act for a repealed enactment does not affect the continuity of the law.

(2) A reference (whether express or implied) in this Act, another enactment, an instrument or document to a provision of this Act is, subject to its context, to be read as being or including a reference to the corresponding provision of a repealed enactment, in relation to times, circumstances or purposes to which the repealed provision had effect.

(3) A reference (whether express or implied) in any enactment, instrument or document to a provision of a repealed enactment is, subject to its context, to be read as being or including a reference to the corresponding provision of this Act, in relation to times, circumstances or purposes to which that provision has effect.

(4) Anything done, or having effect as if done, under (or for the purposes of or in reliance on) a provision of a repealed enactment, and in operation or effective immediately before the coming into operation of this Act, has effect after that date as if done under (or for the purposes of or in reliance on) the corresponding provision of this Act.

(5) Subsection (4) does not apply to the making of any subsidiary legislation to the extent that it is reproduced in this Act.

(6) Any reference to a provision of a repealed enactment which is contained in a document made, served or issued after the repeal comes into operation is, subject to its context, to be read as being or including a reference to the corresponding provision of this Act.

(7) This section has effect subject to any express amendment or specific transitional provision or saving made by or under this Act.

**Transitional provisions.**

177. Schedule 8, which contains transitional provisions, has effect.

**Repeals and revocations.**

178. The Gambling Act 2005 is repealed or revoked to the extent specified in Schedule 8.



**SCHEDULE 1**

Section 9

## REGULATORY OBJECTIVES

For the purposes of this Schedule, “the gambling system” means the gambling system operating in Gibraltar and includes gambling business.

The regulatory objectives specified in section 2(1) are more particularly described in this Schedule:

### **1. Reputation of Gibraltar.**

The protection of the good reputation of Gibraltar objective is taking such action as required by the Government or is considered necessary by the Authority or the Commissioner in consultation with the gambling sector and with the consent of the Minister to preserve Gibraltar’s good reputation as a centre for gambling business.

### **2. The Protection of Consumers.**

The protection of consumers’ objective is securing the appropriate degree of protection for consumers.

In considering what degree of protection may be appropriate, the Commissioner must have regard to—

- (a) the general principle that those providing gambling services should provide consumers with a level of care that is appropriate;
- (b) the differing degrees of risk involved in different kinds of gambling transaction;
- (c) the differing expectations that consumers may have in relation to different kinds of gambling transactions;

- (d) the needs that consumers may have for advice and accurate information; and
- (e) the general principle that consumers should take responsibility for their decisions.

### **3. Financial Crime.**

The reduction of financial crime objective is reducing the extent to which it is possible for a business carried on by–

- (a) a licence holder ; or
- (b) a person carrying on gambling business without holding the necessary licence,

to be used for a purpose connected with financial crime.

In considering the reduction of financial crime objective, the Commissioner must, in particular, have regard to the necessity of–

- (a) licence holders being aware of the risk of their businesses being used in connection with the commission of financial crime;
- (b) licence holders taking appropriate measures (in relation to their administration and employment practices, the conduct of transactions by them and otherwise) to prevent financial crime, facilitate its detection and monitor its incidence;
- (c) licence holders devoting adequate resources to the matters mentioned in paragraph (b).

#### **4. The public interest of Gibraltar**

The public interest of Gibraltar means the wellbeing and protection of the collective interests of Gibraltar and its people and includes the international reputation of Gibraltar and its economic, social and political interests. Where the Minister gives a direction as to what constitutes the interests of Gibraltar in general or in relation to a particular matter, the Commissioner, the Authority, the Gambling Appeals Tribunal and a court shall consider the Minister's direction to constitute the public interest of Gibraltar in any respect so directed.

## SCHEDULE 2

Section 36(1)

### THE THRESHOLD CONDITIONS

#### Conduct of business

1. The conduct of Gambling services shall be:
  - (a) fair and transparent to users and potential users;
  - (b) free from the influence of crime or of benefit to criminals;
  - (c) designed to avoid under-age use;
  - (d) mindful of and provide protections for vulnerable users; and
  - (e) of no harm to the reputation of Gibraltar.

#### Location of offices.

2 .(1) Sub-paragraph (2) or (3) applies if the licence holder concerned (“A”) is carrying on, or is seeking to carry on, a regulated activity.

(2) If A is a legal person–

- (a) if A has a registered office, that office must be in Gibraltar; but
- (b) if A has no registered office, A must carry on business in Gibraltar.

(3) If A is not a legal person and A’s head office is in Gibraltar, A must carry on business in Gibraltar.

### **Appropriate resources.**

3.(1) The business of the licence holder concerned must be conducted in a sound and prudent manner.

(2) To satisfy the condition in sub-paragraph (1), the licence holder must, in particular, have financial and non-financial resources which are appropriate in relation to the regulated activities which the applicant carries on or seeks to carry on.

(3) The matters which are relevant in determining whether the licence holder has appropriate resources include—

- (a) the nature and scale of the business carried on or to be carried on by the licence holder;
- (b) the risks to the continuity of the services provided by, or to be provided by, the licence holder;
- (c) the licence holder's membership of a group and any effect which that membership may have.

(4) The "non-financial resources" of a licence holder include any systems, controls, plans or policies that the licence holder maintains, any information that the licence holder holds and the human resources that the licence holder has available.

### **Effective supervision.**

4.(1) The licence holder concerned must be capable of being effectively supervised having regard to all the circumstances.

(2) The matters which are relevant in determining whether the licence holder satisfies the condition in sub-paragraph (1) include—

- (a) the nature (including the complexity) of the regulated activities that the licence holder carries on or seeks to carry on;
- (b) the complexity of any products or services that the licence holder provides or will provide in carrying on those activities;
- (c) the way in which the licence holder's business is organised;
- (d) if the licence holder is a member of a group, whether membership of the group is likely to prevent the Commissioner's effective supervision of the licence holder;
- (e) if the licence holder has close links with another person ("CL")–
  - (i) the nature of the relationship between the licence holder and CL;
  - (ii) whether those links are or that relationship is likely to prevent the Commissioner's effective supervision of the licence holder; and
  - (iii) if the licence holder is subject to the laws, regulations or administrative provisions of a territory other than Gibraltar ("the foreign provisions"), whether those foreign provisions, or any deficiency in their enforcement, would prevent the Commissioner's effective supervision of the licence holder.

(3) The licence holder has close links with CL if–

- (a) CL is a parent undertaking of the licence holder;
- (b) CL is a subsidiary undertaking of the licence holder;
- (c) CL is a parent undertaking of a subsidiary undertaking of the licence holder;

- (d) CL is a subsidiary undertaking of a parent undertaking of the licence holder;
- (e) CL owns or controls 20% or more of the voting rights or capital of the licence holder; or
- (f) the licence holder owns or controls 20% or more of the voting rights or capital of CL.

**Suitability.**

5.(1) The licence holder must be a fit and proper person, having regard to all the circumstances.

(2) The matters which are relevant in determining whether the licence holder satisfies the condition in sub-paragraph (1) include–

- (a) the licence holder's connection with any person;
- (b) the nature (including the complexity) of the regulated activities that the licence holder carries on or seeks to carry on;
- (c) the need to ensure that the licence holder's affairs are conducted in an appropriate manner, having regard in particular to the interests of consumers and the integrity of the Gibraltar gambling system;
- (d) whether the licence holder has complied with and is complying with–
  - (i) requirements imposed by or under this Act;



- (ii) requirements imposed by the Authority or the Commissioner in the exercise of the functions conferred on them or either of them by or under this Act; or
  - (iii) requests made by the Authority or the Commissioner relating to the provision of information to either of them;
- (e) whether those who manage the licence holder's affairs have adequate skills and experience and have acted and may be expected to act with probity;
- (f) the need to minimise the extent to which it is possible for the business carried on by the licence holder, or to be carried on by the applicant, to be used for a purpose connected with financial crime.

(3) In sub-paragraph (2)(d)(ii), "functions" means functions conferred on the Authority or the Commissioner (as the case may be) by or under this Act.

**Business model.**

6.(1) The business model of the licence holder concerned (that is, the licence holder's strategy for doing business) must be suitable for a person carrying on the regulated activities that the licence holder carries on or seeks to carry on.

(2) The matters which are relevant in determining whether the licence holder satisfies the condition in sub-paragraph (1) include—

- (a) whether the business model is compatible with the licence holder's affairs being conducted, or continuing to be conducted in a sound and prudent manner;
- (b) the interests of consumers;
- (c) the integrity of the Gibraltar gambling system.

## **Procedures and internal controls**

7. Without prejudice to any other threshold condition, in order to monitor the activities authorised under a licence and, in particular, to comply with its obligations under this Act, the Proceeds of Crimes Act 2015 and any other Act in respect of the avoidance and detection of financial crimes, the licence holder shall establish and at all times maintain in operation an effective system of internal controls and procedures.

## **Fees & taxes**

8. (1) The licence holder concerned must pay such periodical and other fees as the Minister may by regulations prescribe by their due date.

(2) The licence holder must pay to the Government all gaming and other taxes (including sums deducted from the earnings of its employees in respect of taxes) and social insurance contributions at their due dates.

## **Responsible gambling**

9. The licence holder must ensure in so far as reasonably practicable that its customers gamble responsibly, and the licence holder must comply with any guidance or codes of practice relating to responsible gambling issued by the Commissioner and the competent authority in any comparable jurisdiction in which the licence holder conducts gambling business.

10. The licence holder must appoint, and identify to the Commissioner, at least one senior manager responsible for compliance with the condition in paragraph 9.

### **Minimum age for gambling**

11. The licence holder must take all reasonable steps to prevent any person from participating in gambling unless the person is –

(i) in the case of lottery, at least 16 years of age;

(ii) in the case of gambling of any other description, at least 18 years of age.

12. The Licence holder must at all times comply with any codes of practice or guidance issued under this Act in this respect.

### **Customer registration**

13. The licence holder shall maintain and operate a system for the vetting and registration of customers which complies with the requirements of this Act or any other relevant enactment.

14. The licence holder shall not permit a person to engage in any gambling activity unless the licence holder has first satisfied the customer registration requirements prescribed in their licence or in any guidance or code of practice published under this Act.

15. Customer data and documents used in the process of customer vetting and registration must be retained in a form that allows recovery and re-examination throughout the period that the customer participates in gambling with the licence holder, and for a minimum period of six years thereafter.

16. All personal data must be processed in accordance with the applicable data protection laws.

### **Duty of candour and spontaneous cooperation**

17. The licence holder and all its directors, officers and employees shall have the duty of loyal, transparent and spontaneous co-operation with the Authority and the Commissioner.

18. Pursuant to this duty, the licence holder must bring to the attention of the Commissioner any change in its circumstances and every event which would be relevant to the Authority or the Commissioner to know for the purposes of carrying out their functions under this Act, including (but not limited to) upholding the gambling regulatory objectives.

19. Without prejudice to the generality of paragraphs 17 and 18, a licence holder must promptly inform the Commissioner of any material change or impending material change of which they become aware with regard to the ownership or control, fitness and propriety, or any regulated individual's ability to satisfy the provisions of this Act or which jeopardise the gambling regulatory objectives, and for these purposes, "material change" includes -.

- (a) any significant change in the legal or financial status of the shareholders, shareholdings, directors or senior managers or in the persons who are, or might reasonably be regarded as, regulated individuals, and is not limited to adverse events;
- (b) any proceedings or realistic threat of proceedings concerning solvency, administration, winding up or other challenge to the ongoing nature of the business or any significant part of the business;
- (c) any regulatory investigation, proceedings or penalty by another regulator against the licence holder or licence applicant;
- (d) any criminal investigation, proceedings or conviction against the licence holder or licence applicant;
- (e) any significant change to the licence holder's financial or banking arrangements.

### **Protection of customer funds**

20. The licence holder must provide to its customers at the time of registration information about the extent (if any) to which customer funds are protected from the consequences of insolvency of the licence holder and advise customers on a timely basis, and ahead of their implementation, of any significant changes to those arrangements

21. The licence holder must at all times comply with regulations, codes of practice or guidance issued under this Act in respect of the protection of customer funds.

### **Payment of winnings**

22. The licence holder must:

- (a) promptly pay winnings and account balances to registered customers in accordance with clearly established arrangements agreed with the customer, save for where it is permitted or required to withhold such winnings under this or any other Act;
- (b) at all times have adequate financing available to pay all current and reasonably estimated prospective obligations in respect of prize payouts from its licensed activities and ensure there is adequate working capital to finance ongoing operations.
- (c) advise the Commissioner if at any time the licence holder becomes aware it may be or become in breach of (a) or (b) above.

### **Prevention of financial crime**

23. The licence holder must at all times comply with the provisions of Proceeds of Crimes Act 2015 and all related legislation, codes of practice and guidance notes relating to the prevention and detection of financial crime.

24. The licence holder must appoint, and identify to the Commissioner, at least one senior manager responsible for compliance with the condition in paragraph 23.

### **Publication of terms and conditions of business**

25. The licence holder shall ensure that its terms and conditions of business, including the rules for the use of its gambling facilities are so displayed that they may readily be seen by those who enter his premises, or in the case of a licence holder in respect of remote

gambling, that they may readily be accessed by persons visiting his remote gambling website at any time.

26. The licence holder must at all times comply with any codes of practice or guidance issued under this Act in this respect.

### **Complaints**

27. The licence holder shall maintain and operate an effective complaints procedure.

28. The licence holder shall, pursuant to its complaints procedure, properly record, enquire into and respond to–

(a) any complaint made to the licence holder by a customer regarding any transaction, unless the complaint is clearly incomplete, vexatious or trivial; or

(b) any complaint referred to the licence holder by the Commissioner.

29. The licence holder must at all times comply with any codes of practice or guidance issued under this Act in this respect.

## **REGULATED FUNCTIONS**

### **PART 1**

- (1) Chief Executive Officer
- (2) Managing Director

### **PART 2**

- (3) Financial Management (CFO or equivalent)
- (4) Head of Regulatory compliance
- (5) Money Laundering Reporting Officer
- (6) Head of safer or responsible gambling
- (7) Head of marketing and/or commercial development
- (8) IT infrastructure and Cyber security (CIO or equivalent)
- (9) Management of gaming operations and floor management in land-based casinos

## **SCHEDULE 4**

Section 102

### **CONNECTED PERSONS**

#### **Bodies corporate.**

1. If the person (“P”) is a body corporate, a person who is or has been—

- (a) a director, manager or similar officer of P or of a parent undertaking of P;
- (b) an employee of P;
- (c) an agent of P or of a parent undertaking of P.

#### **Partnerships.**

2. If the person (“P”) is a partnership, a person who is or has been a member, manager, employee or agent of P.



### **Unincorporated associations.**

3. If the person (“P”) is an unincorporated association of persons which is neither a partnership nor an unincorporated friendly society, a person who is or has been an officer, manager, employee or agent of P.

### **Individuals.**

5. If the person (“P”) is an individual, a person who is or has been an employee or agent of P.

### **Additional roles**

6. A person who is, or at the relevant time was, the partner, manager, employee, agent, appointed representative, banker, auditor or actuary of–

- (a) the person (“P”);
- (b) a parent undertaking of P;
- (c) a subsidiary undertaking of P;
- (d) a subsidiary undertaking of a parent undertaking of P; or
- (e) a parent undertaking of a subsidiary undertaking of P.

## **SCHEDULE 5**

Section 24

### **OCCASIONAL LOTTERIES SUBJECT TO TEMPORARY AUTHORISATION**

#### **Authorisation**

1.(1) The Commissioner may authorise by way of a temporary permit the provision of a lottery sold in Gibraltar.

(2) The nature of the authorised lottery shall be stated in the permit and comply with one of the lottery types set out below.

(3) Any additional or different terms for the lottery will also be included in the permit.

(4) All terms and conditions attached to an authorised lottery must be complied with by the person applying for the authorisation.

## **2. Type 1. Incidental lotteries**

2. (1) Incidental lotteries are small lotteries incidental to certain entertainments such as bazaars, sales of work, fetes, social or charitable events and other events of a similar character, whether limited to one day or extending over a period approved in the authorisation.

Conditions:

(a) the whole proceeds of the event (including the proceeds of the lottery) after deducting—

(i) the expense of the event, excluding expenses incurred in connection with the lottery;

(ii) the expenses for printing and promoting the lottery; and

(iii) such sum, if any, not exceeding £250 as the promoters of the lottery think fit for the expenses incurred by them in purchasing prizes in the lottery;

shall not exceed £1250 and must be devoted to purposes other than private gain as described in promoting the lottery.

(b) none of the prizes in the lottery shall be money prizes;

- (c) tickets or chances in the lottery shall not be sold more than 12 weeks before the event;
- (d) the lottery draw must be held at the event at a time when participants in the lottery are able to be present for the draw;
- (e) the provision of a lottery shall not be the only, or the only substantial, inducement to persons to attend the event;
- (f) no lottery ticket or chance shall be sold by or to a person under the age of 16.

### 3. **Type 2. Society lotteries**

3.(1) Society lotteries are lotteries promoted by a society established and conducted for a primary purpose other than commercial gain. The expression “society” includes a club, charity, institution, organization or other association of persons by whatever name called. Each local or affiliated branch or section of a society shall be regarded as a separate and distinct society.

Conditions:

- (a) the whole proceeds of the lottery after deducting –
  - (i) the expenses incurred for printing and promoting the lottery; and
  - (ii) such sum as may be included in the authorisation for the lottery;
 shall not exceed £15,000 or an amount stipulated by the Authority, and must be devoted to purposes other than private gain as described in promoting the lottery.
- (b) none of the prizes in the lottery shall be money prizes in excess of £500;
- (c) the price of every ticket or chance shall be the same and the price of any ticket shall be stated on the ticket;
- (d) every ticket shall bear upon the face of it the date the lottery will be drawn and the names and addresses of the promoter and the society to benefit from the lottery;

- (e) the lottery draw must be held at the event at a time when participants in the lottery are able to be present for the draw;
- (f) no ticket or chance shall be issued or allotted except by way of sale and upon the receipt of the full price;
- (g) no ticket or chance shall be sold by or to a person under the age of sixteen.

**4. Type 3. Gibraltar Fair lotteries.**

4.(1) Lotteries held on the grounds of the annual Gibraltar fair.

Conditions:

- (a) tickets or chances in the lottery shall not be sold or issued, nor the result of the lottery declared, except in the Fair Grounds and during the course of the Fair.
- (b) none of the prizes in the lottery shall be money prizes;
- (c) no ticket or chance shall be sold by or to a person under the age of 16.

## **SCHEDULE 6**

### **Gambling Appeals Tribunal**

Section 145

**Composition.**

1.(1) The Gambling Appeals Tribunal (the “the Tribunal”) is to comprise a panel of not more than six persons who are appointed by the Minister in accordance with sub-paragraphs (2) to (5), of which three must be lawyers, each of whom has not less than ten years professional standing and is a barrister or solicitor of the Supreme Court of Gibraltar (“the legally qualified members”).

(2) One of the members appointed shall be designated by the Minister to be the chairperson of the Tribunal.

(3) When there is a vacancy among the members the Minister may appoint any appropriately qualified person whom the Minister believes to be suitable to be a member.

(4) A member holds and vacates office in accordance with terms and conditions determined by the Minister (which may include arrangements for the payment of remuneration, allowances and expenses).

(5) A member may resign by notice to the Minister.

(6) The Minister may re-appoint as a member a person who is (or has been) a member.

(8) A Commissioner's staff member or public officer is not eligible to be appointed as a member of the Tribunal.

#### **Term of office of members.**

2.(1) The members of the Tribunal are to be appointed for such term as the Minister may specify in the instrument of appointment.

(2) Instruments of appointment may specify different terms for each member of the Tribunal.

#### **Removal of members.**

3. The Minister may remove a member of the Tribunal who in the Minister's opinion—

(a) is incapacitated;

(b) is bankrupt or makes an arrangement with creditors;

(c) has been convicted of an indictable offence; or

(d) is otherwise unfit or unable to discharge the functions of a member.

#### **Procedure and meetings.**

4.(1) Appeals under the Act are to be heard and determined by a panel comprising such number of members (being not less than three) and in such number, as the Chairperson of the Tribunal may decide and appoint in respect of each decision, of which at least one is a legally qualified member.

(2) The Chairperson must appoint one of the legally qualified members present to preside over the panel for a particular appeal.

(3) A decision of the Tribunal may be made by a majority vote of those present and casting a vote and, in the event of an equality of votes, the member presiding at the meeting has a second and casting vote.

(4) The Tribunal must record any decision, including the reasons for the decision, in writing.

(5) If at any time, as a result of members being unable to act due to conflicts of interest or otherwise unavailable, there are insufficient members available to discharge the Tribunal's functions (whether generally or in relation to a particular matter), the Minister may appoint temporary members for a specified period or to hear and determine an appeal in respect of a particular decision.

(6) The Commissioner must appoint a member of the Commissioner's staff to be the Secretary of the Tribunal. The Secretary of the Tribunal shall be accountable to the Chairperson of the Tribunal only.

(7) The Tribunal may—

- (a) direct any person to provide evidence in writing with respect to any matter it considers to be relevant to the decision before it;
- (b) direct any person to attend at a specified time and place and answer questions appearing to the Tribunal to be relevant to the decision before it;
- (c) direct any person to produce a specified document, or documents of a specified kind; and
- (d) subject to the preceding provisions of this paragraph, otherwise determine its own procedures.

**General powers.**

5. The Tribunal may do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any function conferred on the Tribunal by or under this Act.

**SCHEDULE 7**

Section 149

**DOMESTIC AUTHORITIES**

Gibraltar Co-ordinating Centre for Criminal Intelligence & Drugs;

Gibraltar Financial Intelligence Unit;

Gibraltar Regulatory Authority;

HM Customs;

Liquidators or administrators of licence holders or former regulated persons;

Minister with responsibility for finance;

Minister with responsibility for financial services;

National Coordinator for anti-money laundering and combating terrorist financing;

Office of Criminal Prosecutions & Litigation;

Royal Gibraltar Police;

Legal Services Regulatory Authority

Financial Services Commission

Office of Fair Trading



## SCHEDULE 8

Section 177

### TRANSITIONAL PROVISIONS

#### **Interpretation.**

1.(1) In this Schedule—

“authorisation” under a repealed enactment includes a licence, approval or other permission granted under a repealed enactment and “authorised” is to be construed accordingly; and

“repealed enactment” means the Gambling Act 2005.

(2) Where an authorisation under a repealed enactment is subject to any terms, conditions or requirements, an approval or licence granted under paragraphs 2 to 5 is subject to the same terms, conditions or requirements (if any).

#### **Transitional provision in respect of regulated activities.**

2. A person who, immediately before this Act comes into operation, is a licence holder under a repealed enactment in respect of a regulated activity is to be treated as if that licence is a licence to carry on the regulated activity in question granted by the Authority in accordance with this Act until such time as the Authority issues a new licence under the provisions of this Act, in respect of which that person will not be required to submit an application.

#### **Transitional provision in respect of outstanding applications.**

3. An application for authorisation under a repealed enactment which was made in accordance with that enactment but not determined by the Authority before the

corresponding provision of this Act came into operation is to be dealt with as if it was an application for authorisation to carry on the activity in question made in accordance with that corresponding provision.

**Transitional provisions in respect of existing activities that require a licence under this Act but did not do so under a repealed enactment**

4. Subject to the conditions in paragraph 5 below, a person who, immediately before this Act comes into operation, was carrying on by way of business an activity which under this Act requires a licence as a regulated activity but under a repealed enactment did not (“relevant previous activity”) shall be treated as if he is a licence (“transitional licence”) holder under this Act in respect of that relevant previous activity.
5. The conditions referred to in paragraph 4 are the following:
  - (a) The transitional licence shall be valid for a period of six months (“the initial validity period”);
  - (b) If, during the initial validity period, the transitional licence holder submits to the Authority a full and complete application for a licence or approval (as the case may be) in respect of the relevant previous activity, the validity of the transitional licence shall stand extended until the application has been considered and –
    - (i) a licence given; or
    - (ii) the application is refused, and the applicant has been notified thereof in writing by the Authority.

**Transitional provision in respect of offences and enforcement activity.**

6. Despite its repeal by this Act, a repealed enactment is to continue to have effect in connection with–
  - (a) any investigation or proceedings in respect of an offence under the enactment which is alleged to have been or was committed before its repeal; or
  - (b) any supervisory or enforcement activity by the Commissioner in respect of any matter to which the enactment relates and which was brought to the Commissioner’s attention before its repeal,

and, in particular, if any penalty or sanction is to be imposed for the offence or in relation to the matter, it must be determined in accordance with the provisions of the repealed enactment and not this Act.

**Transitional provision in respect of appeals.**

7. Where an appeal to the Supreme Court under a repealed enactment—

- (a) was instituted before the corresponding provision of this Act came into operation; or
- (b) is instituted after that date in connection with a decision taken under the repealed enactment—
  - (i) before that date; or
  - (ii) after that date in accordance with paragraph 9,

the appeal must be determined in accordance with the repealed enactment.

**Transitional provision for licence holders without an individual performing a regulated function.**

8.(1) This paragraph applies to a licence holder which on the date that Part 5 comes into operation is obliged to but does not satisfy section 58 (obligation to ensure regulated functions are being performed).

(2) Section 58 does not apply to the licence holder in respect of the regulated function until—

- (a) 12 months have elapsed from the date that Part 5 comes into operation; or
- (b) the function is being performed by a regulated individual,

whichever comes first.

(3) If, within 12 months of the date that Part 5 comes into operation, the licence holder applies for approval of an individual to perform the regulated function, the period referred to in sub-paragraph (2)(a) is extended until the application and any appeal from a decision on that application has been determined.

## Acquired rights: regulated individuals

9.(1) This paragraph applies to an individual—

- (a) who immediately before Part 5 comes into operation was performing a regulated function in a licence holder to which section 58 (obligation to ensure regulated functions are being performed) applies; and
- (b) who had previously—
  - (i) been approved by the Commissioner to perform that function under the corresponding provision of a repealed enactment; or
  - (ii) satisfied the Commissioner as to the individual's fitness and propriety.

(2) The individual is to be treated as having been approved by the Commissioner as a regulated individual, in respect of that regulated function in that licence holder, on the date that Part 5 comes into operation.

(3) Approval under this paragraph is subject to the same terms and conditions (if any) which applied to—

- (a) the approval referred to in sub-paragraph (1)(b)(i); or
- (b) the satisfaction referred to in sub-paragraph (1)(b)(ii).

(4) Approval under this paragraph does not affect an individual's liability for any contravention of a repealed enactment which occurred before Part 5 comes into operation.

## **EXPLANATORY MEMORANDUM**

This Bill contains a new legislative framework for the regulation of gambling services and markets and related services.