

553

Island of



Alderney

Ordinance of the States

XVI
2002

Made 20th November 2002

Coming into force20th November 2002

THE GAMBLING (INTERACTIVE GAMING) (AMENDMENT) (No. 2) (ALDERNEY) ORDINANCE, 2002

THE STATES, in pursuance of their Resolution of the 20th day of November, 2002, and in exercise of the powers conferred upon them by section 6 of the Gambling (Alderney) Law, 1999, as amended(a), hereby order:-

1. Immediately after section 31 of the 2001 Ordinance insert the following section-

“31A. (1) This section applies where the Commission believes that

**Sanctions short
of suspension:
financial
penalties**

(a) a ground referred to in section 27(1) exists; and

(b) the circumstances are such that it is unnecessary to suspend or revoke the interactive gaming licence in accordance with section 29, 30 or 32.

(2) The Commission shall give to the interactive gaming licensee written notice that the Commission is considering imposing a financial penalty under this section

(a) Order in Council No. XIV of 1999; No. XXVII of 2001.

and offering a reasonable opportunity to make representations about the imposition of such a penalty at a hearing before the Commission or, at the licensee's election, in writing.

(3) After considering any oral or written representations made by, or on behalf of, an interactive gaming licensee, the Commission may, by notice in writing to the licensee, impose a financial penalty on the licensee.

(4) A financial penalty imposed by the Commission under subsection (3)

(a) shall not exceed £25,000; and

(b) may be imposed

(i) whether or not a direction under section 28 has been made; and

(ii) if such a direction has been made, whether or not the interactive gaming licensee has complied with it.

(5) Where the Commission has given a notice under subsection (2) and believes that the situation of the interactive gaming licensee arose with the consent or connivance of, or was attributable to any neglect on the part of, a key personnel licensee of the interactive gaming licensee, the Commission may, at the same time or subsequently, give to that key personnel licensee written notice that the Commission is considering imposing a financial penalty on him and offering a reasonable opportunity to make representations about the imposition of such a penalty at a hearing before the Commission or, at the key personnel licensee's election, in writing.

(6) After considering any oral or written representations made by, or on behalf of, a key personnel licensee, the Commission may, by notice in writing to the licensee, impose a financial penalty on the licensee.

(7) A financial penalty imposed by the Commission under subsection (6) shall not be greater than the amount of the penalty imposed on the interactive gaming licensee under subsection (3).

(8) A financial penalty imposed under subsection (3) or (6) shall, unless the Commission directs that it shall be suspended, become payable with immediate effect upon receipt of the notice, in which case the full amount of the penalty shall be paid to the Treasurer of the States within seven days.

(9) Where the Commission directs suspension of a financial penalty in accordance with subsection (8), it shall specify in the notice given under subsection (3) or (6) the period, which shall not in any event exceed 12 months, during which the penalty is capable of being activated and, at the end of the period so specified, the penalty shall no longer be capable of taking effect.

(10) Where during the period of suspension the Commission is satisfied on reasonable grounds that a ground referred to in section 27(1) exists, the Commission shall give to the licensee in question written notice that the Commission is considering activating the financial penalty suspended in accordance with subsections (8) and (9) and offering a reasonable opportunity to make representations about the activation of the penalty at a hearing before the Commission or, at the licensee's election, in writing.

(11) After considering any oral or written representations made by, or on behalf of, the licensee and having regard to all the circumstances which have arisen since the financial penalty suspended in accordance with subsections (8) and (9) was imposed, the Commission shall direct by notice in writing to the licensee that the penalty

- (a) shall be payable with immediate effect
 - (i) with the original amount unaltered; or
 - (ii) with the substitution of a lesser amount for the original amount,

in which case that amount shall be paid to the Treasurer of the States within seven days of receipt of the notice; or

- (b) shall be suspended for such further period not exceeding 12 months as it specifies; or

(c) shall not be activated on this occasion and shall continue unaltered.

(12) At a hearing under this section

(a) an interactive gaming licensee or a key personnel licensee shall be entitled to appear and be heard or to be represented by an advocate; and

(b) unless the Commission otherwise directs, the hearing shall be in public.

(13) The Commission shall give a copy of every notice to an interactive gaming licensee or, as the case may be, a key personnel licensee under subsections (3), (6) and (11) requiring immediate payment of a financial penalty to the Treasurer of the States at the same time it gives the notice to the licensee.

(14) In default of payment by the due date of a financial penalty imposed under this section, and without prejudice to any action that the Commission may as a result of that default, the States may proceed to enforce payment as if the amount due were a civil debt.”.

Certificates of prior approval

2. Immediately after Part II of the 2001 Ordinance insert the following Part-

“ **PART IIA**
CERTIFICATES OF PRIOR APPROVAL

Application for certificate of prior approval

33A. (1) A person who wishes to obtain a certificate of prior approval (the “**applicant**”) shall make application in that behalf to the Commission.

(2) An application under this section shall

(a) be in an approved form; and

(b) be accompanied by the deposit of monies determined in accordance with section 33B.

(3) The Commission may, by written notice given to an applicant for a certificate of prior approval, require the applicant to give the Commission further information or a document that is necessary and reasonable to help the Commission determine the application.

(4) Where a notice under subsection (3) has been given, the Commission is not required to determine the application until the notice has been complied with.

33B. (1) A person making an application under section 33A shall pay to the Commission the reasonable costs associated with processing, investigating and determining his application.

Costs of investigating application.

(2) Upon making application for a certificate of prior approval, the applicant shall deposit with the Commission the sum of £10,000, from which the Commission is permitted to draw the costs referred to in subsection (1).

(3) If, prior to the determination of the application, the monies deposited with the Commission in accordance with this section have been exhausted, the Commission may by notice in writing to the applicant require the deposit of such further sum as it thinks necessary.

(4) Where a notice under subsection (3) has been given, the Commission is not required to determine the application until the notice has been complied with.

(5) After determining the application, the Commission shall repay to the applicant any monies not drawn by it from the monies deposited by the applicant in accordance with this section.

(6) The Commission shall, whenever requested to do so by the applicant, account to him in respect of the costs as at that time incurred by the Commission in respect of the application.

33C. The Commission may investigate an applicant for a certificate of prior approval to decide whether he is a fit and proper person to be associated with operations conducted by interactive gaming licensees.

Investigation into suitability.

33D. (1) The Commission shall consider an application for a certificate of prior approval and, subject to this section, either grant or refuse to grant it.

Consideration of application.

(2) At any time before the Commission determines an application, the applicant may, by notice in writing given to

the Commission, withdraw the application.

(3) Where a notice under subsection (2) has been given, the Commission shall give no further consideration to the application and section 33B(5) shall have effect with the substitution for "determining" of "withdrawal of".

(4) The Commission may grant an application for a certificate of prior approval only if it is satisfied that the applicant is a fit and proper person to be associated with operations conducted by interactive gaming licensees.

(5) In determining whether an applicant satisfies subsection (4), the Commission may have regard to the following matters

- (a) the application and the documents submitted with it;
- (b) the applicant's character or business reputation;
- (c) the applicant's current financial position and financial background;
- (d) the applicant's general suitability to be associated with interactive gaming licensees as a business associate;
- (e) if appropriate, the fact that the applicant holds, or has held, a licensed position in respect of gaming, whether interactive or otherwise, anywhere in the world; and
- (f) if the applicant has a business association with another entity-
 - (i) the entity's character or business reputation; and
 - (ii) the entity's current financial position and financial background.

Determination of application

33E. (1) If the Commission grants an application for a certificate of prior approval, it shall promptly issue a certificate of prior approval in a form approved by the Commission to the applicant.

(2) If the Commission refuses to grant an application for a certificate of prior approval, it shall give the applicant written notice of the decision and of the reasons for the refusal.

33F. Unless withdrawn by the Commission under this Ordinance, a certificate issued under section 33E(l) shall be valid on such day as the Commission shall direct for a period of 12 months.

Period of validity of certificate.

33G. The holder of a certificate of prior approval shall pay £30,000 to the Treasurer of the States within seven days of the Commission issuing his certificate.

Charge in respect of certificate of prior approval.

33H. (1) The holder of a certificate of prior approval may apply to the Commission for the renewal of his certificate.

Renewal of certificate of prior approval.

(2) The provisions of this Part shall apply to the renewal of a certificate of prior approval as they apply to the grant thereof.

(3) Upon renewal of a certificate of prior approval, the Commission shall include on the certificate issued to the holder details of all the approvals in principle endorsed on the certificate under section 72A as at the date of renewal.

Certificate of prior approval not transferable.

33I. A certificate of prior approval cannot be transferred.

33J. (1) The Commission may, by notice in writing (a “**withdrawal notice**”) to the holder of a certificate of prior approval, withdraw his certificate of prior approval under this section if it is satisfied on reasonable grounds that the holder of the certificate-

Withdrawal of certificate of prior approval.

- (a) is not, or is no longer, a fit and proper person to be associated with operations conducted by interactive gaming licensees;
- (b) has been convicted of an offence under the Law or any Ordinance made thereunder, or of any offence involving fraud or dishonesty;
- (c) has contravened a provision of this

Ordinance, being a provision the contravention of which does not constitute an offence;

(d) obtained the certificate as a result of a materially false or misleading representation or in some other improper way.

(2) Withdrawal of a certificate of prior approval takes effect when the withdrawal notice is given or, if the withdrawal notice specifies a later day, on the later day.

(3) A person whose certificate of prior approval has been withdrawn shall return the certificate to the Commission within seven days of receiving a withdrawal notice.

(4) A person who, with reasonable excuse, fails to comply with subsection (3) shall be guilty of an offence and liable, on conviction, to a fine not exceeding level 5 on the Alderney uniform scale."

3. Immediately after section 72 of the 2001 Ordinance insert the following section-

Approval in principle of interactive gaming equipment.

72A. (1) The holder of a certificate of prior approval issued under section 33E(l) may, by application in writing, apply to the Commission-

(a) for approval in principle of interactive gaming equipment proposed to be offered to, or used by, interactive gaming licensees in their operations; or

(b) for approval in principle to modify interactive gaming equipment previously approved in principle by the Commission under this section.

(2) If the Commission considers it necessary for the equipment, or the equipment as proposed to be modified, to be evaluated in order to be in a position to determine an application under subsection (1), the Commission shall-

(a) carry out the evaluation; or

(b) direct the holder of a certificate of prior approval-

Sidenote in here

- (i) to arrange to have the equipment evaluated at his own expense by an approved evaluator; and
- (ii) to give to the Commission a written report of the evaluation.

(3) If the Commission carries out an evaluation of the equipment, the holder of a certificate of prior approval shall pay to the Commission the reasonable costs incurred by the Commission associated with carrying out that evaluation.

(4) The Commission may refuse to give an approval in principle if-

- (a) the costs payable under subsection (3) have not been paid to the Commission; or
- (b) the holder of a certificate of prior approval fails to comply with a direction of the Commission under paragraph (b) of subsection (2).

(5) The Commission shall approve in principle, or refuse to approve, the equipment and give to the holder of a certificate of prior approval written notice of its decision.

(6) Where the Commission decides to refuse an application under this section, the notice under subsection (5) shall state the reasons for the decision.

(7) Where the Commission decides to grant an application under this section, as soon as reasonably practicable after receiving notice under subsection (5), the holder of a certificate of prior approval shall return the certificate of prior approval to the Commission.

(8) On receiving the certificate of prior approval, the Commission shall-

- (a) endorse upon it a description of the equipment for which approval in principle has been given and return the endorsed certificate to the holder of the certificate of prior approval; or
- (b) where applicable, amend the endorsement already entered upon it so as to describe the

modification to the equipment for which approval in principle has been given and return the amended certificate to the holder; or

- (c) if the Commission does not consider that it is practicable to endorse or amend the certificate, issue a replacement certificate of prior approval free of charge, incorporating descriptions of all the current approvals in principle, to the holder.

(9) An approval in principle under this section does not depend on the certificate of prior approval being endorsed to record the approval or amended to record a modification to a previous approval or a replacement certificate of prior approval being issued.”

Consequential and minor amendments to 2001 Ordinance.

4. (1) In the arrangement of sections in the 2001 Ordinance-

- (a) insert the following entry after the entry relating to section 31-

“31A. Sanctions short of suspension: financial penalties.”;

- (b) insert the following entries after the entry relating to section 33-

“PART IIA

CERTIFICATES OF PRIOR APPROVAL

- 33A. Application for certificate of prior approval.
- 33B. Costs of investigating application.
- 33C. Investigation into suitability.
- 33D. Consideration of application.
- 33E. Determination of application.
- 33F. Period of validity of certificate.
- 33G. Charge in respect of certificate of prior approval.
- 33H. Renewal of certificate of prior approval.
- 33I. Certificate of prior approval not transferable.
- 33J. Withdrawal of certificate of prior approval.”;

- (c) insert the following entry after the entry relating to section 72-

“72A. Approval in principle of interactive gaming equipment.”.

(2) In section 7 of the 2001 Ordinance, for “21” substitute “60”.

(3) Immediately after section 8(2) of the 2001 Ordinance insert the following subsection

“ (3) Unless the Commission otherwise directs, the hearing shall be in public.”.

(4) Immediately after section 9(3) of the 2001 Ordinance insert the following subsections-

“ (4) At any time before the Commission determines an application, the applicant may, by notice in writing given to the Commission, withdraw the application.

“ (5) Where a notice under subsection (4) has been given, the Commission shall give no further consideration to the application and section 4(5) shall have effect with the substitution for “determining” of “withdrawal of”.”.

(5) Immediately after section 11(2) of the 2001 Ordinance insert the following subsection-

“ (3) For the purposes of paragraph (e) of subsection (1) and consequently of section 10(1)(b), an entity holding a certificate of prior approval issued under section 33E(1) shall be regarded without further investigation as having satisfied the Commission that it is a fit and proper person to be associated with an interactive gaming licensee's operations.”.

(6) In section 42(2)(c) of the 2001 Ordinance, for “£150” substitute “£250”.

(7) In section 70 of the 2001 Ordinance

(a) immediately after subsection (2) insert the following subsection-

“ (2A) If the Commission carries out tests in accordance with subsection (2)(b), the interactive gaming licensee shall pay to the Commission the reasonable costs incurred by the Commission associated with carrying out those tests.”; and

(b) for subsection (4) substitute the following subsection-

“ (4) The Commission may refuse to give an approval if-

(a) without reasonable excuse, the interactive gaming licensee fails to comply with a requirement under subsection (2); or

(b) the costs payable under subsection (2A) have not been paid to the Commission.”.

(8) Immediately after section 72(4) of the 2001 Ordinance insert the following subsection-

“ (4A) Where an application under this section is made in respect of equipment for which approval in principle under section 72A exists, without requiring the equipment to be evaluated in accordance with subsection (2), the Commission shall approve it.”.

(9) Section 82 of the 2001 Ordinance is repealed.

(10) In section 102(1) of the 2001 Ordinance

(a) in the definition of “applicant” immediately after paragraph (a) insert the following paragraph-

“(aa) a person making application under section 33A for a certificate of prior approval; or”;

(b) immediately after the definition of “business associate” insert the following definition-

“ **certificate of prior approval**” means a certificate issued under section 33E(1); “;

(c) in the definition of “duplicate key personnel licence”, for “15” substitute “51”; and

(d) immediately after the definition of “wager” insert the following definition-

“**withdrawal notice**” means a notice given under section 33J(1);”.

4. (1) In sections 1, 63(2), 71(3), 75(2), 79(5), 87(6), 94(2) and 96(1) of the Gambling (Interactive Gaming) (Alderney) Ordinance, 2001, as amended, the words “and liable, on conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the Alderney uniform scale, or to both” are repealed.

Increase in penalties for offences.

(2) In sections 40(3), 41(3), 60(6), 73(3), 77(3), 79(2), 80(4), 81(8), 84(3), 86(2), 87(5), 89(2), 90(2), 91(3) and 96(2) of the Gambling (Interactive Gaming) (Alderney) Ordinance, 2001, as amended, for “level 5 on the Alderney uniform scale” substitute “£25,000”.

(3) The increases in penalties brought about by subsections (1) and (2) shall apply only in respect of offences committed after 20th November, 2002.

5. (1) In this Ordinance, “the 2001 Ordinance” means the Gambling (Interactive Gaming) (Alderney) Ordinance, 2001, as amended(b).

Interpretation.

(2) The Interpretation (Guernsey) Law, 1948(c) applies to the interpretation of this Ordinance as it applies to the interpretation of an enactment in force in the Island of Guernsey.

6. This Ordinance may be cited as the Gambling (Interactive Gaming) (Amendment) (No. 2) (Alderney) Ordinance, 2002.

Citation.

(b) No. X of 2001; No. IV of 2002.

(c) Ordres en Conseil Vol. XIII, p. 355.

Commencement

7. This Ordinance shall come into force on the 20th
November, 2002.

D. V. JENKINS
Clerk of the States