

Statutory Document No. 2010/0832

*Online Gambling Regulation Act 2001*

ONLINE GAMBLING (PARTICIPANTS' MONEY) REGULATIONS 2010¹

Laid before Tynwald: 14 December 2010
Coming into Operation: 20 December 2010

The Treasury makes these Regulations under section 21(1A) of the Online Gambling Regulation Act 2001¹.

1 Title

The title of these Regulations is the Online Gambling (Participants' Money) Regulations 2010.

2 Commencement

- (1) These Regulations come into operation on 20 December 2010.
- (2) These Regulations apply to participants' money held by an operator on the coming into operation of these Regulations as well as to participants' money received by an operator after that time.

3 Interpretation

- (1) In these Regulations —
“**approved player protection mechanism**”, in respect of an operator, means security provided or deposits and reserves maintained in accordance with conditions of the operator's license imposed under section 6(2) of the Online Gambling Regulation Act 2001;
“**client account**”, in respect of an operator, means an account held by the operator at a recognised bank where the account —
 - (a) includes the words "client account" in its title;
 - (b) is specially created to hold —
 - (i) participants' money; or

¹ 2001 c.10

- (ii) if applicable, amounts held in accordance with regulations 5(2) and 5(3); and
- (c) is segregated from any account holding money that is not participants' money or an amount held in accordance with regulation 5(2) and 5(3);

“Commission” means the Isle of Man Gambling Supervision Commission;

“operator” means a person by whom online gambling is conducted;

“operator’s system”, in respect of an operator, means a record of any type that can be used to determine the amount of money a participant has access to in order to gamble with the operator;

“overseas deposit-taking institution” means an institution that —

- (a) carries on the regulated activity of deposit-taking (within the meaning of the Financial Services Act 2008) outside the Island; and
- (b) is regulated for that purpose by a regulatory authority (within the meaning of the Financial Services Act 2008) established outside the Island; and
- (c) is specified in a list published by the Treasury;

“participant” means a person (other than an operator) who takes part in online gambling;

“participants’ money” has the meaning given by regulation 3A;²

“payment service provider” means a person who, in accordance with arrangements made with an operator, provides services for accepting electronic payments from or making electronic payments to participants; and

“recognised bank” means —

- (a) an institution licensed under section 7 of the Financial Supervision Act 2008 to carry on deposit taking (as defined for the purposes of that Act); or
 - (b) an overseas deposit-taking institution.³
- (2) For the purpose of these Regulations an operator is in default where —
- (a) a liquidator, receiver, administrator or trustee in bankruptcy has been appointed in respect of it;
 - (b) any equivalent procedure has occurred in respect of it in a country or territory outside the Island and the United Kingdom; or
 - (c) the Commission has directed that it shall be treated as in default for the purpose of these Regulations.

3A Meaning of “participants’ money”

- (1) In these Regulations “**participants’ money**” means subject to paragraphs (2) and (3), money which an operator, —
 - (a) holds or receives from a participant; or
 - (b) owes to a participant;for the purposes of, or in the course of, online gambling.
- (2) Participants’ money includes, subject to paragraph (3), deposits, winnings, sums transferred to the participant’s account with the operator, gratuities and bonuses redeemed by the participant.
- (3) Despite paragraphs (1) and (2) money received by the operator from the participant is not participants’ money if, —
 - (a) the money has been placed by the operator with a third party of a kind approved for that purpose by the Commission, in order to permit the participant to gamble with that third party;
 - (b) the money is still with the third party or has been lost in gambling with the third party;
 - (c) the placing of the money mentioned in subparagraph (a) took place with the knowledge and consent of the participant; and
 - (d) the operator can demonstrate that, at the time of the placing of the money as mentioned in subparagraph (a), the operator informed the participant that the money would thereafter be unprotected.⁴

4 Duty to hold participants’ money separately

- (1) An operator must pay all participants’ money received by it into a client account.
- (2) Participants’ money must be held on trust for the participant entitled to it.
- (3) Paragraph (1) does not apply to participants’ money to the extent to which any liability of the operator to pay that money to participants is covered by security provided or deposits and reserves maintained in accordance with conditions of the operator’s licence imposed under section 6(2) of the Online Gambling Regulation Act 2001.
- (4) Participants’ money held in a client account that conforms to these regulations is deemed to satisfy the licence conditions imposed by section 6(2) of the Online Gambling Regulation Act 2001 in respect of the provision of security, deposits and reserves.
- (5) Paragraphs (1) and (2) do not apply where the operator pays participants’ money to, or by the written direction of, the participant entitled to it.

5 Additional amounts to be held in client account

- (1) This regulation applies where a participant makes an electronic payment to or receives payment from an operator through a payment service provider.
- (2) If there is a shortfall between the total amount of money available from an operator's approved player protection mechanisms and the total value of participant's money as recorded on the operator's system then the operator must hold additional funds in the client account equal to the difference - so that, if required, all participants' money may be paid to participants from that operator's approved player protection mechanisms alone.
- (3) It shall be acceptable for the purposes of reducing the volume of money transactions to and from a client account for an operator to maintain a surplus of money, or allow to accrue bank interest in a client account equal in value or percentage to that agreed with the Commission.
- (4) Money held in a client account in respect of paragraphs (2) and (3) shall be considered participants' money and its use for purposes other than safeguarding participants' money must be approved by the Commission.
- (5) Surplus money in a client account held as described in paragraphs (2) and (3) may be drawn from the client account by the operator provided this action does not bring the total value of the funds in the operator's approved player protection mechanisms below the total value of participants money as recorded on the operator's system.

6 Trusts of participants' money

Participants' money held by an operator is held on trust –

- (a) on the terms and for the purposes set out in these Regulations and, subject to that, *pari passu* for the respective participants from whom it is received and for whom it is held;
- (b) subject to sub-paragraph (a), *pari passu* in meeting any shortfall in valid claims by participants to participants' money (disregarding regulation 7 for this purpose); and
- (c) after all valid claims under paragraphs (a) and (b) have been met, for the operator itself.

7 Pooling

- (1) For the purpose of regulation 6(a), in determining the entitlement of participants to participants' money, all participants' money, even if held in more than one client account in any number of banks, shall be treated as pooled.

- (2) Where, at the time that an operator is first in default, a cheque or other payable order has been paid into a client account but has not been cleared, the amount of the cheque or other payable order shall, when it is cleared, be pooled in accordance with this regulation.

8 No withdrawal in case of default

- (1) Where an operator is in default, no money may be withdrawn from any client account of the operator without the consent of the Commission;
- (2) Paragraph (1) does not apply to any step taken by the operator in good faith which it reasonably believes will preserve or enhance the fund of participants' money available despite the default.
- (3) The Commission may advise a recognised bank that an operator is in default as described in regulation 3(2). This notification may originate from the Commission or from the operator acting upon the Commission's instructions notifying the bank of its default status.
- (4) It shall be a defence for a recognised bank that facilitates a breach of regulation 8(1) (and thereby an offence against section 21(1B) of the Online Gambling Regulation Act 2001) that the Commission has not advised the bank that the operator is in default.

9 Displacement of general law

The duties of an operator under these Regulations in relation to participants' money shall take the place of the corresponding duties which would be owed by it as a trustee under the general law, but without limiting the remedies available to participants.

MADE 26 NOVEMBER 2010

ENDNOTES

Table of Endnote References

¹ The format of this legislation has been changed as provided for under section 75 of, and paragraph 2 of Schedule 1 to, the Legislation Act 2015. The changes have been approved by the Attorney General after consultation with the Clerk of Tynwald as required by section 76 of the Legislation Act 2015.

² Definition “participants’ money” substituted by SD2016/0341.

³ Para (1) substituted by SD2014/0226.

⁴ Reg 3A inserted by SD2014/0226.