Introduction

The Isle of Man

As a self governing British Crown Dependency, the Isle of Man is a small, self-reliant country that believes in working hard and playing by the rules. Our independent spirit, enterprise and innovation have made the Island a successful centre for quality international business. We promote a thriving, diverse economy; which provides jobs for our people and revenue for our public services. We are also a democratic, responsible country with a reputation for supporting international action against financial crime and tax evasion and we play a positive role in the global economy.

Isle of Man Government Policy

The Isle of Man Government’s policy is to provide a well regulated jurisdiction for those companies wanting to legitimise their online gambling businesses by complying with strict regulations to prevent crime and money laundering; protect the young and the vulnerable and create a safe and fair environment for those persons who wish to participate in on-line gambling.

In pursuit of this policy the Isle of Man offers the strongest possible consumer protection to players, whether they live in the Island, in the UK, or further afield, by:

- Protecting player monies in bank accounts protected by trust arrangements or bank guarantees;
- Implementing a rigorous compliance programme which checks operators’ compliance against a large body of detailed law and regulation;
- Thoroughly screening new applicants for integrity, competence and fitness of model. The current application process undertak...
Having legislation that makes it a pre-condition of any remote gambling operation that:

i. All operators’ assets are held locally and “within arm’s reach” so that – in the event of a catastrophe - player data (from servers) and player money (from banks) can be seized and repatriated to players whose operator has failed;

ii. In addition to any prior testing history in another jurisdiction all games must be checked and certified as meeting Isle of Man standards;

iii. All beneficial ownership and structures used to run operators’ companies at all levels, from the local Isle of Man company to the ultimate parent company, are disclosed;

iv. All information is safeguarded to the standards required by the Isle of Man’s Data Protection Act 2002, which has been determined to be equivalent to EU data protection standards1;

v. All operators have contingency plans for disaster recovery and that operators have assessed their risks periodically;

vi. Operators maintain a local presence in order to guarantee that the GSC can have face to face dialogue as and when required.

**The UK White list**

In August 2007 the Isle of Man was granted “white list” status by the UK Government under the UK Gambling Act 2005 (“the 2005 Act”). This allowed remote gambling operators, licensed in the Isle of Man, to advertise their products in the United Kingdom. The 2005 Act was based around three key licensing objectives:

- Preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime;
- Ensuring that gambling is conducted in a fair and open way; and
- Protecting children and other vulnerable persons from being harmed or exploited by gambling.

In white listing the Isle of Man, the UK Department of Culture, Media and Sport (“DCMS”) acknowledged that the Island’s legal and regulatory system satisfied these three key licensing objectives and was “able to demonstrate that they had in place a rigorous licensing regime designed to stop children gambling, protect vulnerable people, keep games fair and keep out crime”2.

The Isle of Man Government remains committed to these key objectives and to maintaining the highest possible level of consumer protection for users of remote gambling services. Consequently the opportunity to contribute to the DCMS’ “Consultation on the Regulatory Future of Remote Gambling in Great Britain” which focuses exclusively on consumer protection is welcomed.

The Isle of Man Government believes a country has the right to determine the consumer protection standards applying to their own residents and how those standards are enforced.

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1 Commission Decision 2004/411/EC
2 DCMS press release 090/07
Also, any country which licenses online operators should require those operators to conform to the consumer protection standards of the target markets in which they operate. The Isle of Man Government further believes that a country hosting remote gambling operators and offering gambling to consumers should therefore either:

- Assess each country’s standards and ensure operator business models and procedures are fit for purpose for each market in turn; or
- Put in place comprehensive standards that are far in excess of the highest standard set by any possible target market its operators may wish to enter.

The Isle of Man Government’s policy in this important area remains to adopt and maintain the latter approach.

**Summary**

The Isle of Man Government’s view set out in this submission provides a detailed response in relation to each of the questions contained in the DCMS consultation document. These responses can be summarised as follows:

- The Isle of Man Government fully supports any initiative to promote, maintain or increase international standards on consumer protection within both the remote and non-remote gaming industries;
- The Isle of Man Government also supports the concept of licensing those operators not established in a white listed jurisdiction as a mechanism for ensuring that UK consumer protection standards are maintained; and
- The Isle of Man Government does not support a proposal that would require operators licensed and regulated in a white listed jurisdiction, to obtain a licence in the UK.
Response to Questions

Question 1: Do you agree with the Government’s preferred option in relation to EEA and Gibraltar licensed operators? If not, please set out clearly your reasons and let us know if you consider any of the options, or any other option not considered in this paper to be more appropriate.

The Isle of Man Government has no objection to the UK Government’s preferred option that EEA and Gibraltar licensed operators be required to obtain a UK licence to access the UK market. This would support the UK’s ability to ensure high standards of consumer protection are understood and complied with and will ensure operators in EEA countries adopt and maintain consumer protection standards that already exist in white listed jurisdictions.

Question 2: Do you agree with the Government’s preferred option b) [‘develop a more streamlined white listing process as well as introduce licensing for operators in white listed jurisdictions’]? If not, please set out clearly your reasons and let us know if you consider any of the options, or any other option not considered in this paper, to be more appropriate.

It is the Isle of Man Government’s view that the UK Government’s preferred option of having both a more streamlined white listing process as well as introducing licensing for operators in white listed jurisdictions would represent unnecessary duplication. Licensed operators in the Isle of Man are required by law, to maintain the highest levels of consumer protection, to promote open and fair gaming and identify and prevent gaming from becoming a source of crime or disorder. White listing also enables the UK authorities to inspect the regulatory and legislative integrity of their gambling regimes and allows constant oversight to ensure remote operators maintain UK consumer protection standards or better.

The Isle of Man Government does not believe that requiring operators in a white listed jurisdiction to obtain UK licences would result in enhanced consumer protection, nor would it prevent online players using unregulated and globally distributed affiliate websites (which offer bonuses, etc to referred players).

From its inception the Isle of Man Government has supported the UK white list as a mechanism to protect as many consumers as possible from poorly regulated operators. The white list represents a balance between providing competitive platforms for operators while requiring those operators to maintain the very highest standards of consumer protection; it is a concept which has been successful as a model and there is merit in re-stating the white list consumer protection standards and requiring all operators, whether or not they are located in the EEA, to work at least towards those standards, or higher.

The Isle of Man Government acknowledges the principle of ‘cost recovery’ in relation to licensing, compliance and enforcement of individual operators and also understands there will be costs associated with the verification of a jurisdiction’s compliance with the terms of the white list. The consultation document is silent on the substance of cost recovery, however the Isle of Man Government would be willing to engage in detailed discussion on this issue.
Question 3: Do you agree with the Government's preferred overall option in relation to EEA, Gibraltar and white listed operators? If not, please set out clearly your reasons and let us know if you consider any of the options, any other combination of the options, or any other options not considered in this paper, to be more appropriate.

Please see responses to questions 1 and 2.

Question 4: Do you agree with the twin triggers for requiring a licence?

The Isle of Man Government does not agree with the proposal contained in the first trigger ‘operators will be required to apply for a licence from the [UK] Gambling Commission if they wish to have access to the British market. By this we mean transact with, and/or advertise to, British consumers’

The Isle of Man Government considers that any operator wishing to transact with, and/or advertise to, consumers in the United Kingdom should either have a UK issued licence or, as now, hold a licence issued by a white list jurisdiction.

Question 5: Do you agree with the definition of ‘transacting with British consumers’?

Whilst it is understood the definition of ‘transacting with British consumers’ is linked to ‘ordinarily resident’, the definitions proposed by DCMS to establish this by using residential address, British bank account information or IP addresses, may inadvertently catch individuals residents outside the UK. Many Isle of Man residents have British bank accounts and some Island residents own a holiday home in the UK, but are not considered to be ‘ordinarily resident’ in the UK. Furthermore, whilst the majority of Isle of Man residents hold a British passport in many cases these individuals have never been ‘ordinarily resident’ in the UK.

Establishing a definition of ‘ordinarily resident’ is without doubt a complex issue and further consideration on this matter is warranted.

Question 6: Do you agree that the above definitions of advertising are appropriate? [‘above definitions’ are contained in Para. 5.6 to 5.10 of the DCMS consultation document]

The Isle of Man Government understands the need to review, and possibly amend, the definitions referred to in Para. 5.6 to 5.10 of the consultation document. However, if the white list is retained and operators in a white listed jurisdiction are not required to obtain a UK licence, then any amendment to the definitions would have to reflect that position.

The Isle of Man Government considers that targeting advertising by operators provides an opportunity to promote compliance with the UK’s proposals by requiring UK marketing and advertising companies to provide services only to white listed or licensed operators.

The Isle of Man experience is that whilst terrestrial advertising plays an important role in player acquisition and retention for online operators, the key driver for player acquisition is predominantly through the use of globally based affiliate websites and therefore the denial of terrestrial advertising would not be sufficiently effective as a mechanism to protect British consumers.
The Isle of Man Government considers that the ability to protect consumers from operators accessing the market illegitimately should be a key objective of UK gambling policy. Failure to protect the market properly will simply disadvantage those reputable operators who comply with regulation to the benefit of those who do not.

**Question 7: Do you agree that direct mail and spam etc are a low impact and less successful form of advertising?**

The Isle of Man Government is not aware of any evidence on whether or not direct mail and spam etc are a low impact and less successful form of advertising, and consequently has no comment to offer on this matter.

**Question 8: Do you think we should permit the advertising of non-remote foreign gambling without the requirement for the operator to be located in a white listed jurisdiction or to hold a Commission licence?**

It is the view of the Isle of Man Government that to allow non-remote foreign operators to advertise without a licence would compromise the upholding of the UK’s key licensing objectives, which are designed to protect consumers from unregulated and potentially exploitative gambling and could set a double standard for remote and non-remote foreign gambling.

Although it might be argued that the different points of product consumption make remote and non-remote foreign gambling sufficiently different, the Isle of Man Government believes that, allowing the advertising of unlicensed non-remote foreign gambling without knowledge of the propriety of the product offered or company providing it, would be contrary to much of what the DCMS has identified as triggering this review, including:

- Standards and software testing – without a licence there is no way of knowing if the products (slots, roulette tables, etc) have been tested for fairness;
- Social responsibility – no knowledge of the practices used to keep players using the gambling products or measures that are in place to restrict play;
- Protection against crime – no background checks have been undertaken on key shareholders or personnel.

The Isle of Man Government considers that a consistent approach to advertising should be applied regardless of the point of consumption of the product; this can only effectively be achieved through a licensing system for all gambling advertising.
Question 9: Do you agree with our initial assessment regarding approaches towards compliance of remote gambling operators that may be based wholly or partly overseas? In particular in relation to:

a. Additional fees
b. MOUs or other agreements between regulators
c. Requiring some presence in Britain

If not, please state your reasons why as well as the approach you consider the Government should take.

a. Additional Fees: As stated above, the Isle of Man Government believes that ensuring compliance of remote gambling operators that are based in non-EEA countries should continue to be through the white listing process and for operators in the EEA and Gibraltar through licensing or some other appropriate mechanism to maintain standards of consumer protection. The cost, and any requirement for ‘additional fees’, associated with the administration of the white list has been considered in our response to Question 2 above.

b. MOUs or other agreements between regulators: The Isle of Man Government would be willing to consider the development of an MOU between the UK’s Gambling Commission and the Isle of Man Gambling Supervision Commission to set out the working relationship between the regulators and how each may assist the other in relation to compliance and consumer protection matters.

c. Requiring some presence in Britain: The Isle of Man Government’s does not believe that the requirement for a physical presence in the UK is necessary as this would be an additional burden on non UK based operators and a disincentive to either seeking to be licensed or based in a white list jurisdiction. Licensed operators may simply move to less well regulated jurisdictions.

Question 10: Do you agree with the Government’s proposals relating to offences as set out above [? If not please clearly state your reasons why as well as your views on the approach you consider the Government should take.

The Isle of Man Government would agree that there are a number of possible options that may contribute to reducing the use of non-white listed or licensed operators, such as:

- Proactive education of consumers;
- Public access to register of legitimate operators active in the UK market;
- Legislation to allow the prosecution under UK law of owners/key officials engaged in illegitimate activity.

Criminalisation of a consumer who uses unlicensed operators (i.e. not licensed in a white listed jurisdiction or in the UK) would be entirely disproportionate and the Isle of Man Government agrees with the decision not to introduce such an offence.

On balance, the Isle of Man Government would agree that the introduction of extra-territorial application for offences concerning advertising or providing remote gambling would be disproportionate.
If the market is properly protected then the need to criminalise consumers should not arise. In the absence of such protection the Isle of Man Government considers that the UK’s proposals should be implemented.

**Question 11:** Do you think we have considered that above two restriction measures adequately? If not, please set out clearly your reasons and your views on the approach you consider the Government should take.

Please see response to Question 12 below

**Question 12:** Do you agree that the Government should consider taking powers in legislation to implement technological enforcement measures in the future in the event it became necessary and appropriate to do so? If not, please set out clearly your reasons and your views on the approach you consider the Government should take.

The Isle of Man Government agrees that the UK should consider taking legislative powers to introduce additional safeguarding enforcement measures.

As a general observation the Isle of Man Government agrees there are substantial technical, political and social issues related to the protection of the market from illegitimate access, through either Internet Service Provider blocking to prevent access to sites or Financial Transaction Barring to prevent use of sites. However, the Government believes that market protection will be the defining factor in the success or otherwise of any move to maintain consumer protection for UK citizens and any future initiatives. The Government believes that consumer protection can only be realistically guaranteed by appropriate market protection measures, so that only approved operators with verified consumer protection standards have access to the market.

**Question 13:** Do you agree with the proposed consumer awareness raising measures that we have proposed? If not, please clearly state why as well as the approach you consider should be taken.

The Isle of Man Government agrees with the consumer awareness raising measures outlined in paragraph 5.47 of the consultation document. It would also add two further points:

- The Italian authorities have reported a large degree of the success, in protecting their market, stemmed from a nationwide exercise to educate consumers about legitimate and illegitimate gambling choices through mainstream media; and
- The UK Gambling Commission could benefit from establishing close relationships with its licensees and white listed partners to allow them to inform on illegitimate activity. Licensed operators are keen to highlight activities carried on by unlicensed operators.

**Question 14:** Do you agree with the Government’s overall approach to enforcement as set out above [‘offences’ are set out in Para.5.35 to 5.40 of the consultation document]? If not, please clearly set out the reasons why as well as your views regarding the approach you consider the Government should take.

Whilst the Isle of Man Government does not agreed with the proposed system of licensing operators in white list jurisdictions, it does generally agree with the overall proposed enforcement package set out in the consultation document.
The Isle of Man Government is fully aware of the technical, political and social issues connected to blocking illegal internet sites but believes that the UK should consider taking legislative powers to introduce the necessary additional enforcement measures.