

## The prevention of money laundering and combating the financing of terrorism

Guidance for remote and non-remote casinos

Third edition

Response July 2016

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### 1 Introduction

1.1 In a [consultation](#) published in September 2015 on proposed amendments to the licence conditions and codes of practice in relation to the prevention of crime associated with gambling, the Gambling Commission (the Commission) set out proposals to publish a third edition of *The prevention of money laundering and combating the financing of terrorism: Guidance for remote and non-remote casinos* (the guidance). The purpose of the updated edition of the guidance would be to:

- incorporate learning from the Commission's anti-money laundering case work
- provide new guidance and update existing guidance in critical areas identified in our compliance and investigation activity
- update references to the Serious Organised Crime Agency (SOCA) to the National Crime Agency (the NCA), its successor
- meet the requirements of HM Treasury to review regularly any guidance issued.

1.2 We also reviewed the guidance in support of the proposals contained in the *anti-money laundering* chapter of the consultation on proposed amendments to the licence conditions and codes of practice. We intend that licensees will use the updated guidance in conjunction with the anti-money laundering licence conditions which will come into effect in autumn 2016.

1.3 We intend this edition of the guidance to be the last edition before the *Directive (EU) 2015/849 of the European Parliament and of the Council on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing* (the EU 4<sup>th</sup> Money Laundering Directive) is transposed into UK legislation. We expect that new regulations will come into force in mid-2017, at which time we will publish new or updated guidance for gambling operators.

1.4 The third edition of the guidance will be published simultaneously with this response or soon thereafter. The guidance will come into force immediately, save for those parts which make reference to new or amended licence conditions and codes of practice published in our [response](#) to the crime consultation mentioned above, which will come into effect in the autumn.

### 2 Consultation responses

2.1 The consultation commenced on 30 September 2015 and ended on 31 December 2015. Ten responses were received in relation to the anti-money laundering guidance. A list of non-confidential respondents can be found at *Appendix A*. The Commission is grateful to all those who responded to the consultation.

## Consultation question

Q21. Do you have any comments on the revised sections of the guidance document?

### Respondents' views

- 2.2** We received a generally positive response to the revised sections of the guidance document, and a number of respondents fully supported the revisions.
- 2.3** One operator noted that the gambling industry has been assessed as low risk under the national money laundering risk assessment (the NRA), and suggested that the guidance should reflect this. They also suggested that it should be made clearer that it is possible for illicit funds to be introduced into the financial system using many layers before passing through the gambling industry, where it may also pass through a number of layers before it is integrated back into the financial system.
- 2.4** An operator suggested more clarity was needed on the position regarding customer verification information from banks. Another operator and an industry body expressed concern that the guidance was confusing in respect of the verification requirements for remote casinos, particularly in relation to what constitutes simplified due diligence and enhanced due diligence. They asked for confirmation that two electronic verification hits or two documents is sufficient for verification purposes, and that further checks may be undertaken on a risk-sensitive basis.
- 2.5** Another industry body expressed a preference for separate guidance for remote gambling, rather than guidance which covers both remote and non-remote casinos. They also welcomed the idea of developing a standard risk assessment template for operators to consider, and that this would be especially useful to smaller operators and new market entrants. There was also a suggestion that the due diligence requirements in the guidance are open to interpretation. Respondents asked for confirmation that, in respect of enhanced customer due diligence, two pieces of data plus first payment by debit or credit card; or three pieces of data if the first payment was not by debit or credit card. They also asked if the Commission had a specific time period after which they expect operators to review the customer due diligence information they hold on customers.
- 2.6** A number of technical comments were made on specific paragraphs, and an anti-money laundering consultant provided a minor drafting suggestion.

### The Commission's position

The NRA is a relative assessment that places the gambling industry overall as low risk in comparison with other, much larger regulated sectors such as the banking and accountancy sectors. The NRA notes that money laundering may still occur in low risk sectors at a significant level. It also assesses compliance with the provisions of anti-money laundering and counter terrorist financing legislation and regulation as a vulnerability factor. The guidance endeavours to assist casino operators in the application of appropriate anti-money laundering measures in their sector, so the relative risk of gambling by comparison to other regulated sectors does not serve any useful purpose in the context of the guidance.

We have made the guidance clearer in respect of the customer verification and enhanced due diligence requirements, and have taken into account the amendments which were proposed.

We will consider separate guidance for remote gambling, as well as for other gambling sectors, in the next edition of the guidance. This will be published following the introduction of new regulations for money laundering, which are expected next year.

## Consultation question

Q22. Do you have any comments on the new sections of the guidance document?

### Respondents' views

- 2.7** One operator requested some clarity around the statement that money laundering can occur without any of the traditional stages being present, and suggested that an operator cannot know that money laundering has occurred without there being a conviction for money laundering. They also asked for more detail regarding the risks posed by junket operators and winners cheques following minimal play, and asked for further clarity on the intention of a paragraph which discusses the failure to disclose offences.
- 2.8** Another operator noted that the inclusion of turnover in the threshold calculation for customer due diligence would require third party development to introduce, and asked whether this was an area of good practice rather than an absolute requirement. They also said that it would be helpful to include informal guidance previously provided regarding circumstances where the Police request the maintenance of a customer relationship while they conduct investigations.
- 2.9** In relation to paragraph 6.16 of the guidance, an industry body expressed the view that recycled winnings distorts the picture of money laundering and creates too many false positives, and suggested that total money staked is the appropriate measure of cash put at risk in a suspicious transaction. They also said that it was disproportionate and should not be introduced.
- 2.10** Several respondents supported the new sections of the guidance document.

### The Commission's position

As explained in the guidance, money laundering can include the use of criminal proceeds to fund gambling as a leisure activity, where the launderer has no intention of 'washing' the proceeds in the traditional sense. Using any money that is the proceeds of any crime can amount to money laundering if the person using or taking the money knows or suspects that it is the proceeds of crime.

The revised guidance also makes it clear that the money laundering offences assume that a criminal offence has occurred in order to generate the criminal property which is being laundered (the predicate offence). No conviction for the predicate offence is necessary for a person to be prosecuted for a money laundering offence. Nor is it necessary for there to be a conviction for money laundering in order for an operator to have a suspicion, rather than knowledge, that a customer is laundering criminal proceeds.

We have provided additional detail regarding the risks of junket operators and winners cheques.

Following a specific enquiry from a remote gambling representative body, we have previously provided advice in relation to the inclusion of turnover (or recycled winnings) in the threshold for customer due diligence in remote casinos, and this advice was [published on our website](#). This advice sets out the legal requirements in clear terms, and the Commission has taken the opportunity to include this advice formally in the guidance document. It is not a new requirement.

Guidance in relation to circumstances where the police request the maintenance of a customer relationship while they conduct investigations is already included in the guidance at paragraph 8.78.

## Consultation question

Q23. Are there any other areas which you think should be covered in the guidance?

### Respondents' views

- 2.11** One respondent suggested that the guidance could acknowledge that operators do not have the resources and powers that are available to law enforcement and that they face limitations which makes it difficult to comply with their obligations.
- 2.12** Another respondent said that they advocated updates to the guidance in collaboration with the industry to reflect and supplement the new licence conditions which the Commission proposes to introduce, and that they preferred separate guidance for land-based and remote casinos.
- 2.13** An industry body said they would like to see more guidance in relation to the nature of the supporting information an operator is expected to obtain from a customer where there is a heightened risk of money laundering or terrorist financing. Various other technical amendments were also proposed.
- 2.14** An operator said that the requirement to assess the risks regarding business associates and suppliers should be undertaken on a risk-sensitive basis with a requirement that only reasonable measures are taken. They also said that the wording in paragraph 2.40 regarding enhanced customer due diligence should be clarified.

### The Commission's position

We are aware that operators may not have the powers and resources available to law enforcement and we take this into account when we consider operators' compliance with their anti-money laundering obligations. Further information regarding our approach to compliance can be found in our [Licensing, compliance and enforcement policy statement](#).

We will generally consult with the industry when updating our guidance, as we have done in this instance. We will consider separate guidance for land-based and remote casinos in the next edition of the guidance, which we will publish following the introduction of new regulations for money laundering, which are expected next year.

The nature of supporting information which operators should obtain from a customer will be determined by the risk rating attributed to the customer by the operator. Enhanced measures for customer due diligence and ongoing monitoring will be required for those customers who present a higher risk of money laundering (for example, politically exposed persons). The technical amendments proposed were taken into account in the drafting of the final version of the guidance document.

We agree that the requirement to assess the risks regarding business associates and suppliers should be undertaken on a risk-sensitive basis. We have amended paragraph 2.40 to make it clearer.

### General comments

- 2.15** Some respondents provided general comments on the consultation document, in addition to their responses to the specific questions posed in the consultation.
- 2.16** A respondent suggested that the interpretation of the Commission's expectations remains unclear, especially concerning thresholds, high risk and other matters. They said they

consider it premature to apply requirements which are, in their view, similar to those of the EU 4<sup>th</sup> Money Laundering Directive to all gambling sectors. They also said that the narrative in the guidance suggests a zero failure regime rather than promoting a risk-based approach.

- 2.17** Another respondent was concerned about the change of wording in the section on the principles to be followed from 'by reporting suspicious activity' to 'in relation to suspicious activity'. They said this gave the impression that the Commission was seeking to impose a higher burden on operators, and that this is in contrast to the underlying legislation and policy which recognises the balance to be struck between commercial and regulatory imperatives.
- 2.18** Some respondents made comments regarding higher risk, namely:
- the lack of guidance from the Commission as to what we consider higher risk leaves it open to interpretation and inconsistency
  - without clarity on what constitutes high risk, a disproportionate burden is placed on the operator and customers' civil liberties are impinged upon, and the majority of customers are reluctant to give details of their source of income
  - requests for clarification as to what constitutes higher risk and how it differs from high/low commercial value.
- 2.19** One respondent said that the Commission should not insist on the use of systems which link player activity as this increases regulatory costs, while another said that the Commission should not dismiss third party risk assessments as these can be useful tools.
- 2.20** By contrast, a respondent welcomed much of the amended guidance and said that its future development would be aided by continued industry engagement, and recommended the establishment of a group for gambling operators similar to the Joint Money Laundering Steering Group for financial services, so that guidance is not developed in regulatory isolation.

## **The Commission's position**

We consider that the revised guidance is clear that the risk of money laundering is an area which operators are expected to manage. The guidance does not, in our view, impose requirements similar to those of the EU 4<sup>th</sup> Money Laundering Directive to all gambling sectors, nor do we agree that the narrative in the guidance suggests a zero failure regime. The guidance only applies to non-remote and remote casinos and promotes an approach to anti-money laundering which is based on operators' adequate assessment of the risks of exposure to money laundering for their businesses. We are satisfied that the changes incorporated in the guidance are not at odds with any requirements under the EU 4<sup>th</sup> Money Laundering Directive.

The change of wording from 'by reporting suspicious activity' to 'in relation to suspicious activity' is a technical amendment which is based on the fact that operators cannot report suspicious activity to the Commission. Suspicious activity is reported to the NCA.

What constitutes high risk will differ from operator to operator, by customer type, by product, by payment method, by the jurisdiction in which the customer resides, the geographic location of the gambling facilities, and so on. While we have provided operators with the main factors they should consider when assessing risks and guidance in relation to risk assessments, we cannot provide a comprehensive list of high risks which will cover all possible permutations for all operators. Risk assessments are the fundamental first step in the management of risks and operators are best placed to understand and identify the customers and situations which will give rise to a high risk of money laundering for their individual businesses.

The Commission has not required operators to use systems which link player activity, but has rather highlighted this as an area of good practice as it provides a more comprehensive picture of a customer's gambling activity and assists in the identification of possible money laundering activity.

We think that the most effective regulatory approach is to focus on the outcomes we expect operators to achieve. In some areas we specify particular rules or processes, but where possible, we aim to allow licensees to take differing approaches to meet our requirements. This includes using rapidly developing technological tools and data analytics. The Commission has a very clear ambition to see the gambling industry apply the intellect, expertise, technology and data that it brings to product and market competition, to preventing crime. We have challenged operators to show how they use data gained through a variety of channels and products to give insight into consumer behaviours and effectively manage risk. While we recognise that many of the operators we license are comparatively small in scale, the principle of using reliable data to make policy and operational decisions to protect the licensing objectives applies to all licensees regardless of size. Over time, we expect to see greater use of data management strategies and deployment of technology as a way of identifying and managing licensees' anti-money laundering and counter-terrorist financing risks, as well as meeting their social responsibilities.

We have not dismissed the use of third party risk assessments, but have said that such tools should not be used in isolation or relied upon solely. Operators should also be satisfied that the information supplied by the third party is sufficiently detailed, reliable and accurate.

We have taken note of the comment regarding continued industry engagement and the establishment of a steering group.

### **3 Conclusion**

- 3.1** The third edition of the guidance will be submitted to HM Treasury for approval for the purposes of sections 330 and 331 of the Proceeds of Crime Act 2002, section 21A of the Terrorism Act 2000, and Regulations 42 and 45 of the Money Laundering Regulations 2007. The guidance will come into force immediately. We intend that licensees will use the parts of the updated guidance which relate to the amended anti-money laundering licence conditions, in preparation for those conditions coming into effect in autumn 2016.
- 3.2** The Commission will review the guidance following the introduction of new or amended money laundering regulations, expected in June 2017.

## Appendix A

### Respondents to the consultation

A total of ten formal written responses were received during the consultation period. A list of non-confidential respondents is set out below and the full responses are available on the Commission's website.

<b>Respondent</b>	<b>Organisation type</b>
Gala Coral Group	Licensed operator
Gambling Business Group	Industry body
National Casino Forum	Industry body
Remote Gambling Association	Industry body
SMP Partners Limited	Corporate services provider - egaming
Think About Crime Limited	Anti-money laundering consultancy

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### Keeping gambling fair and safe for all

For further information or to register your interest in the Commission please visit our website at:  
[www.gamblingcommission.gov.uk](http://www.gamblingcommission.gov.uk)

Copies of this document are available in alternative formats on request.

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