



## **AN UPDATE ON THE PROPOSED REVISIONS TO THE LICENSING MODEL.**

Following the June meeting of the Alderney Gambling Licensees Forum, at which the proposed new licensing model was discussed, various changes have been made to reflect the inputs that the Commission received from licensees. The purpose of this note is to update interested parties on these changes, to confirm the intended timing and to contemplate some of the transitional issues that may arise. An individual “Anticipated Impact” appendix is attached separately, indicating the Commission’s initial assessment of the impact of these changes for each specific existing licensee or certificated associate. We will be pleased to discuss this initial assessment further with each licensee/ certificate holder individually.

This note is an update and should not be taken as definitive. The AGCC is currently in the process of drafting the relevant changes and there may be further minor changes to the proposed licensing model.

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#### **1. The changes**

Following the constructive exchange of views at the June meeting of the AGLF the Commission now intends to amend the proposals put to that meeting by:-

- Introducing a further intermediate fee band at £100,000 for Category 1 (B2C) licenses, to lessen the immediate increase for the largest operators.
- Limiting the increase in fee in any year to only one band irrespective of the licensee’s Net Gaming Yield.
- Recognising in the Net Gaming Yield definition the significant difference that exists in the revenue model of aggregator games such as interactive bingo, as compared to a standard remote casino.
- Deferring the implementation of increases arising from the new fee scale for existing licensees and associates to their first renewal following March 31, 2010, in order to provide adequate time for effective budgeting for any increased licence fees.
- Recognising the need for a Category 2 licensee to be incorporated in Alderney.

Further thought has been given to the specific licensing criteria for Category 1 (B2C) and Category 2 (B2B), and to the transitional “no detriment” allowances for impending renewals and applications that would otherwise be at a lower fee-band in the new regime.

## 2. The current proposals

The licensing model that is being proposed consists of a) licensed activities and b) certified activities. These two categories are aimed to distinguish those activities which take place within the legal jurisdiction of Alderney from those activities and services rendered by entities outside Alderney's legal jurisdiction.

### 2.1 Licensed activities

The form which the licence will take will be such that various categories of authorised activity can be endorsed onto a single standard licence certificate. Licensed activities are further broken down into three categories of licenses, as follows:

#### 2.1.1 Category 1: eGambling licence (B2C)

- i) This category will be available for business to customer relationships only. In this category of licence the customer always refers to the player.
- ii) Therefore, an entity that contracts with the player to organise any form of gambling from Alderney will require this category of license; definitive criteria are proposed in section 4 below.
- iii) Organising gambling could typically include entering into an agreement with the player; registration and verification of the player, the management of the player's funds and offering the player one or more game/s. The entity normally enters into an agreement with the player through a set of published terms and conditions.
- iv) This type of licence will not permit the holder to "effect" the gambling game (i.e. to conduct wagering).
- v) The holder of this category of license will be able to offer all forms of gambling products subject to the requisite contractual relationship with the holder of a Category 2 license.

#### Requirements

- i) Legal presence in Alderney, through an Alderney incorporated company.
- ii) The licensee must have approval for his Internal Control Systems ("ICS") and satisfy the Commission that approval has been granted for the gambling equipment ("EGE") in respect of those functions conducted under this category of licence prior to commencement of operations.

#### Fees

The following scale of fees is proposed:

Where the annualised NGY is less than £1 million	£35,000
Where the annualised NGY equals or exceeds £1 million but is less than £5	£70,000

million	
Where the annualised NGY equals or exceeds £5 million but is less than £7.5 million	£100,000
Where the annualised NGY equals or exceeds £7.5 million	£140,000

*Note: In the case of a start-up company (one with no previous licensable activity in Alderney), the licence fee will be set at £35,000 for the first year of its operations. Thereafter, the fees payable will be based on its annualised NGY, measured from the last quarterly returns prior to the renewal date.*

*A mechanism for relief from the effect on the fee of an isolated revenue “spike” is set out within the following definition:-*

Annualised Net Gaming Yield (NGY) is defined as the revenues of the licensed activity net of winnings and prizes and is net of any contractual revenue sharing arrangement that has been verified by AGCC. It will be determined by reference to the respective licensee’s operating statement for the most recently available three month period prior to the fee payment date. Where annualised NGY in that statement is within 10% of a fee increment value on the above scale, NGY will be calculated by reference to the average of the value reported in that period and of the period immediately preceding it. Changes in annualised NGY in one financial period, that would affect the fee quantum, will only be taken into account in the fee calculation for the next subsequent renewal period. Under no circumstances will licence fees be rebated.

### **2.1.2 Category 2: eGambling licence (B2B)**

- i) This category of licence is available to an entity that *effects* the gambling game/s and the holder is hereafter referred to as the ‘gambling platform operator’.
- ii) This category of licence permits the holder to *effect* the gambling game/s on behalf of a Category 1 licensee or on behalf of operators based elsewhere in the world (“foreign operators”). In this context *effect* is intended to mean striking a bet or housing and recording the random element and gambling game outcome; definitive criteria are proposed in section 4 below.
- iii) The ‘gambling platform operator’ must have a system/s consisting of hardware and software upon which the gambling game/s is being effected.
- iv) This category of licence will permit the holder of the licence to operate more than one gambling game and may include multiple gambling platforms.

- v) This category of licence does not permit the holder of the licence to contract directly with players.

#### **Requirements**

- i) Legal presence in Alderney, through an Alderney incorporated company. The licensee must have approval for his Internal Control Systems (“ICS”) in respect of those functions conducted under this category of licence prior to commencement of operations.
- ii) The licensee should satisfy the AGCC that the games are fair and that the gambling system that is being managed and/ or operated is secure, properly controlled and auditable. Accordingly, the licensee should have Electronic Gambling Equipment (“EGE”) approval prior to commencement of operations.
- iii) The gambling equipment used by the licensee should be located in secure premises on Alderney/ Guernsey with one or more of the certified hosting providers.
- iv) For avoidance of doubt, an operator who holds a Category 1 licence and who also affects the gambling game/s for his own use will require both a Category 1 and Category 2 licence.

#### **Fees**

A license fee of £35,000 per annum will be payable;

#### **Notes**

- i) Customers (players) of a Category 1 licensee can be transferred to a gambling platform operator based outside Alderney that does not hold an Alderney licence. However this “exportation” of Alderney players must be notified in T&Cs and by way of relevant notification at the point when the player is being ‘exported’. A seamless transfer (i.e. without any specific notification) is only permissible if the foreign gambling platform operator holds an Alderney certificate (see the section on Associate Certificates).
- ii) The gambling equipment of a certified foreign platform provider should be approved and located in premises approved by the AGCC (see the section on Hosting Certificates).
- iii) Anti-avoidance measures will be introduced by the AGCC to prevent transfer pricing abuses between licence categories where the same entity holds both categories 1 and 2 licences.

### **2.1.3 Category 3: Restricted use eGambling licence**

The current provisions in the legislation continue to apply. However, the legislation should clarify the following:

- i) Only foreign based operators can apply for a restricted use licence.
- ii) The licence covers both the activities conducted under categories 1 and 2.

- iii) The applicant will be required to satisfy the Commission that the foreign based company is properly licensed to conduct eGambling operations, whether B2C and/ or B2B as appropriate for its proposed Alderney-related business.
- iv) The AGCC will require broad comfort from the licensee that its internal control systems and gambling equipment provides adequate player protection.

**Fees**

- i) A new annual fee of £10,000;
- ii) A daily fee of £200 for each day or part thereof in which the licence is activated.

## **2.2 Certificated activities**

Certificated activities will be approved as follows:

### **2.1.2 Associate Certificates**

- i) The current provisions in Regulation 50(1)(a) and (b) are applicable to associates providing gambling specific software and/ or handling of customer funds to pay for gambling transactions;
- ii) A new Associate Certificate for *Foreign Platform Provider* will be introduced which will be available to foreign based platform providers and to whom a Category 1 licensee can 'export' his customers in a seamless fashion;
- iii) For the avoidance of doubt, in the event that the foreign platform provider prefers not to obtain an associate certificate, the Category 1 licensee will be required to inform its customers in a visible manner that they are playing the particular game/s outside the jurisdiction of Alderney; that they will be playing with a foreign operator and that they will not be able to lodge a complaint to the AGCC in the event of any dispute/s arising from related play.

**Fees**

- i) Annual fee of £10,000 for those categories of Associate Certificates currently provided for in Regulations 50(1)(a) and (b);
- ii) Annual fee of £35,000 for the new category of Associate Certificate for *foreign platform provider*.

### **2.1.3 Hosting Certificate**

The current provisions apply, except that the legislation will make it clear that the issuing of hosting certificates will no longer be restricted to Alderney and/ or Guernsey. As explained above, the holder of an Associate Certificate for foreign platform providers will, as is the case in Alderney and/ or Guernsey, be required to hold his equipment in approved premises.

**Requirements**

Current provisions apply

## **Fees**

An annual fee of £10,000.

### **3. Transitional issues**

It is currently intended that the draft legislative amendments will be presented to the States of Alderney for their approval in October, 2009. The amendments would become effective on 1st January, 2010 but with provision for fees in respect of any renewals or applications in the interim period to be payable at the revised rates, where these renewals are, under the new regime, lower than the current rates; and for any increase from the current fees only to become payable for renewals following 31<sup>st</sup> March, 2010.

#### **3.1 Re-designation as Category2 of a former Associate Certificate holder**

A number of existing Associate certificate-holders will fall within the new Category of Cat2 licensee under the above definition. The change may well be significant in respect of the company's residence, capitalisation, ICS and EGE conformity, reporting requirements and Key Individual certification. It is likely that the Commission will offer "grandfathering" for a limited period to such Associates, whereby their application for Category2 licensing will immediately qualify them as licensees due to their former association but subject to submission in due course of any missing pre-requisites for licensee status (such as an Alderney company, adequate capital, approved procedures and designated and approved key individuals).

#### **3.2 Review of capital adequacy requirements**

The Commission is currently reviewing the regulatory provisions on licensees' capital adequacy. These are formulated on the protection of player funds and as such would only be relevant to Category1 licensees in the new licensing model. However the Commission wishes to implement revisions to this regime and at the same time to specify the minimum capital requirement for Category2 licensees. Proposals are likely to be put forward in September, for implementation in January of 2010.

#### **3.3 Transfer pricing and anti-avoidance**

The Commission will reserve to itself the right to look through any off-market pricing that, in the Commission's opinion, has been introduced between associated Category1 and Category2 licensees to optimise the fee band of the Category1 licensee.

### **4. Some draft definitions**

#### **4.1 Category1 licence**

4.1.1 Definition – the criterion used to identify the licensing requirement will be the activity of player registration and the acceptance of the contractual obligation to the player for the performance of the site concerned.

- 4.1.2 ICS and EGE relevance will remain unchanged from the current position – it is not proposed to make any major amendment to the relevant Regulations. Thus both Category1 and Category2 licensees will require approved ICS and EGE before they can commence operation. However it is likely that aspects of an existing operator’s approved ICS will attach to the related Category2 licence in prospect. Likewise it is certain that much of the EGE approval will attach to the Category2 licence. Practical arrangements for the transference or “grandfathering” of these existing approvals will be developed.
- 4.1.3 Likewise since the prescribed formats for new applications include references that are likely to be relevant only to one of the Categories, the submission of a new ICS or EGE application will of necessity include a number of sections marked “non-applicable”.

#### **4.2 Category 2 licence**

- 4.2.1 Definition – the key criterion distinguishing a platform operator for the purposes of Category2 licensing from a passive provider of gambling software and systems is the routine access to the production environment of the systems concerned, and/or a contractual responsibility to do so. This responsibility will be used in practice by the Commission to determine the requirement for a Category2 licence.
- 4.2.2 ICS and EGE relevance – as 3.2.2 above. Since this is the “new” aspect of the regime, every Category2 licensee will need to submit applications for ICS and EGE approval. Where these applications refer to sub-sets of existing approved ICS and/or EGE under the current system, approval will be automatic.
- 4.2.3 Capital requirement – [under consideration]
- 4.2.4 Reporting requirements– [under consideration]
- 4.2.5 Key Individual certification – the KI regime will apply equally to Category2 licensees. Category2 licensees’ ICS will include an organisation chart from which Key Individuals should be identifiable. No additional submission will be required in respect of existing approved KIs

#### **4.3 Existing associates who wish to remain non-resident in Alderney.**

The new regime permits the operation of a Category1 licensee’s site to be effected overseas, in one of two ways. By voluntarily applying for certification, an overseas platform provider can obtain *foreign platform provider status*, allowing its Alderney customers’ players to be exported seamlessly (i.e. without notification that they depart from Alderney’s jurisdiction). Alternatively the overseas platform provider can operate without Alderney certification, in which case notification to the players concerned will be required.