

ANTI-MONEY LAUNDERING REGULATIONS 2017: WHAT YOU NEED TO KNOW

The UK's new Anti-Money Laundering Regulations are due to come into force at the end of June. **Melanie Ellis** of Harris Hagan looks at what is changing and what gambling businesses need to do about it.

The new Anti-Money Laundering Regulations 2017 (the regulations) come into force on 26 June. While the final regulations have not yet been passed by Parliament (and it is possible that some slight delay will creep in due to difficulties forming a government), it is not anticipated that significant amendments will be made to the draft version.

The government has chosen to exempt all gambling services other than casinos (both land-based and online) from these, in light of the risks being perceived as relatively low, partly due to the existence of robust licence conditions and supervision by the Gambling Commission. All gambling businesses could, nevertheless, benefit from reviewing the new regulations, in particular the lists of risk factors and items that should be covered in an AML/CTF policy and risk assessment.

Casino operators will be required to comply with the new regulations as soon as they come into force, so should be working on updating their AML risk assessment and policy documents now. Some key changes to be introduced by the new regulations are highlighted in this article.

Increased focus on the risk-based approach

The new regulations focus heavily on organisations taking a risk-based and proportionate approach to their Anti-Money Laundering (AML) and Counter-Terrorist Financing (CTF) measures. This includes the

new requirement in regulation 18 to carry out a risk assessment and keep a written record of that assessment, as well as the information on which it was based. This approach will be familiar to casino operators, as the Gambling Commission already requires (under licence condition 12.1.1) that all operators carry out an assessment of the risks of their business being used for money laundering and terrorist financing.

Helpfully, regulation 18 includes a list of risk factors to be considered by the business which are:

- its customers;
- the countries or geographic areas in which it operates;
- its products or services;
- its transactions; and
- its delivery channels.

The person conducting the risk assessment should also take into account:

- information made available to them by the supervisory authority (which, in the case of casinos, is the Gambling Commission); and
- the size and nature of their business.

The Commission has an obligation, under regulation 17, to carry out its own risk assessment of the money laundering and terrorist financing risks to which casinos are subject. "Where appropriate" the Commission must make information from that assessment

available to casinos, unless prevented from doing so by the Data Protection Act. Information shared by the Commission under this regulation may provide further assistance to casino operators in relation to what should be included in their own risk assessments.

AML and CTF policy

Operators will need to review and revise their AML and CTF policy and procedure document in light of the new regulations and ensure that it reflects the amended requirements and a risk-based approach. The revised regulations provide some assistance again, with regulation 19 giving a list of items that must be covered in the policy:

- risk management practices;
- internal controls (including responsibility for compliance with the regulations, screening of employees and appointment of a nominated officer);
- customer due diligence (discussed below);
- reporting and record keeping;
- monitoring and management of compliance (including internal communication of policies and procedures);
- procedures providing for the scrutiny of unusually large or complex transactions, or unusual patterns of transactions;
- procedures for the introduction of new technology to assess and mitigate any risks;
- procedures for internal reporting of suspicions;
- appropriate measures in relation to any use of agents.

Customer due diligence (CDD)

For land-based casinos, under the current regulations there is no requirement to carry out CDD unless and until a customer purchases or exchanges chips with a total value of €2,000 or more. This “threshold” approach remains acceptable, but the new regulations make it clear that a customer collecting winnings of €2,000 or more would also trigger the requirement to carry out CDD.

Regulation 30 provides clarification as to the timing of verification of a customer’s identity. This should be completed “as soon as practicable after first contact” but can take place during the establishment of a business relationship provided:

- a) this is necessary not to interrupt the normal conduct of business; and
- b) there is little risk of money laundering or terrorist financing.

It should be noted that there is no justification for allowing a customer to gamble pending completion of verification procedures if a medium or high risk of money laundering /terrorist financing is identified in the initial risk assessment.

The regulations also confirm that casino operators may rely on due diligence conducted by a third party provided certain conditions are met. This would cover, for example, the situation where an operator wishes to rely on due diligence carried out by another operator within its group or an agent. The operator must obtain information from that third party which enables it to satisfy the requirement to identify and verify the identity of the customer. It must also enter into a written agreement with the third party, which enables it to obtain copies of the information and documentation held on the customer on request.

Enhanced due diligence (EDD)

The requirement to carry out EDD in all circumstances where the customer is not physically present for identification purposes has been removed and replaced with a requirement to carry out EDD in any case where there is a high risk of money laundering or terrorist financing. However, regulation 33 contains a

non-exhaustive list of risk factors to take into account when conducting that risk assessment which includes:

- the product or transaction is one which might favour anonymity; or
- the situation involves non-face-to-face business relationships or transactions, without certain safeguards, such as electronic signatures.

Effectively, the requirement for online casinos to apply EDD to all customers continues, with a possible exception if they introduce an electronic signature system or similar safeguards.

The list of risk factors also includes geographical risk. Customers from countries identified as high risk in various sources (including countries identified by credible sources as not having effective AML/CTF measures or having high levels of corruption, countries subject to sanctions or embargoes by the EU or UN and countries identified on a list published by the government as having terrorist organisations operating within them) should always be subject to EDD.

Politically exposed persons (PEPs)

The key change to be aware of in relation to PEPs is that individuals from Great Britain can now be PEPs, whereas previously only those in overseas jurisdictions met the definition. Operators should review their customer database to identify existing British customers who will now be PEPs and, if it has not already been done, carry out an EDD exercise in relation to them.

The regulations clarify that the level of EDD which is appropriate for any given PEP is to be assessed using a risk-based approach, to ensure that the exercise is proportionate to the risk posed. Customers should not be refused service or subject to discrimination simply due to being a PEP. A similar sliding scale of EDD measures is therefore to be applied to PEPs as to other customers, based on factors such as their jurisdiction and the nature of their political role.

Next steps

If they have not already done so, casino

Money laundering reporting officers (and/or whoever is responsible for maintaining policies and procedures in this area) should:

- make themselves familiar with the provisions of the new regulations;
- conduct a review of their AML/CTF risk assessment and policy and procedure documents. In particular, both documents should reflect a risk based and proportionate approach and cover off the items in regulation 19 and the risk factors identified in the regulations;
- identify and carry out necessary additional training of relevant staff members to bring them up to speed on the new provisions; and
- identify any customers who now fall within the definition of PEPs or otherwise have been raised to a higher risk level and carry out appropriate and proportionate EDD.

Conclusion

Recent regulatory action by the Commission demonstrates the importance it places on the licensing objective of “preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime”. The Commission has also highlighted in a number of cases that having appropriate policies and procedures is one thing, but these must be followed in practice, at every level of the business. Changes to AML/CTF requirements present a good opportunity not only to review and update documents, but also to make all members of staff aware of the steps they need to take to keep crime out of your business.



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