

**Testimony of André Wilsenach, Chief Executive Officer,  
Alderney Gambling Control Commission, Channel Islands**

**June 6<sup>th</sup>, 2007**

**Submitted for the Record Concerning  
Legislative Hearing on H.R.2046, the "Internet Gambling Regulation  
and Enforcement Act of 2007"**

**Held Before the Financial Services Committee  
United States House of Representatives  
On Friday, June 8<sup>th</sup>, 2007, at 10:00 a.m.**

## 1. Introduction

Mr. Chairman and Members of the Financial Services Committee, I am André Wilsenach. I am the Chief Executive Officer of the Alderney Gambling Control Commission and have been with the Commission from January 2002 to present. I am responsible for overseeing and managing the regulation of eGambling on behalf of the Commission. The Commission is responsible for the regulation and control of the eGambling industry, based on Alderney in the Channel Islands.

I am grateful for the opportunity to submit written testimony to you concerning my experiences in regulating eGambling transactions and ensuring that consumers are ensured of the highest level of consumer protection.

I shall attempt to answer the question *“Can Internet Gambling be effectively regulated to protect Consumers and the Payments System?”* It is my contention that the evidence, based on my experience in regulating gambling over the last 10 years, of which the last five years was spent on regulating eGambling, shows that eGambling can indeed be regulated.

This paper sets out to explain how the Alderney Gambling Control Commission, where I have been employed for the last five years, has regulated the eGambling industry. In doing so, I will provide the Committee with:

- A brief background on Alderney’s constitutional position; the regulatory framework in place for licensing and regulating eGambling; and the values underpinning the regulation of eGambling;
- An introduction to the Commission;
- A brief synopsis of the licensing regime available in Alderney;
- A short description of the approach followed by the Commission over the last seven years in ensuring that:
  - The industry is kept free from crime;

- Gambling is conducted in a fair and transparent way;
- The young and vulnerable are protected.

## **2. Background to regulating eGambling in Alderney**

- **Constitutional position of Alderney**

Alderney is a self-governing, democratic territory and one of the principal islands of the Bailiwick of Guernsey, which is a Crown Dependency. Alderney is outside the EU and is part of the Bailiwick's internationally recognised financial services centre.

The Crown, acting through the Government of the United Kingdom, has responsibility for Alderney (along with the other Channel Islands) in the fields of foreign affairs and defence. The island's relationships with the EU and other countries are primarily through appropriate UK Government departments. Domestically, Alderney's "constitutional" measure is the Government of Alderney Law, 2004. The island is governed by the States of Alderney (the Legislature), which consists of a President and ten states members, all elected by universal suffrage.

Routine matters of government are performed by three committees: Policy & Finance, General Services and Building & Development Control. Between them, they deal with all aspects of the island's finances and day-to-day administration. Certain matters of government and services are dealt with by the States of Guernsey under arrangements in place since 1948. The Policy & Finance Committee, consisting of all ten States Members, has responsibility for eGambling.

As a consequence of the 1948 arrangements for some key services to be provided in Alderney by the States of Guernsey, Guernsey provisions on taxation apply in Alderney and the States of Alderney has no authority to raise

revenue itself through such taxes. Because of the relationship with Guernsey, two members of the States of Alderney are chosen to be full members of Guernsey's States of Deliberation and participate in that legislature/government accordingly.

- **Background to the legalisation of eGambling**

In 1994, the States of Alderney resolved as a matter of policy to introduce legislation permitting *inter alia* land-based casino gaming in the island. Although this resolution has not resulted in all the legislation intended, the underlying reason for it was to provide an incentive for further development within the tourist sector. By 1996, a property development company, intending to re-develop one of the island's premier hotel sites, suggested to the States that the fledgling online gambling industry provided a potential revenue stream that would enable it to proceed with the proposed development. Only electronic betting, being an extension of well-established telephone betting, was mentioned. The opportunity and scope for such an industry to operate successfully out of Alderney was quickly recognised and the States enacted the Gambling (Betting) (Alderney) Ordinance, 1997, made under powers contained in the Gambling (Alderney) Law, 1975, as amended, part of which enabled the Policy & Finance Committee to license and regulate what were termed "electronic betting centres". The first licences were granted by the Committee in 1998 and operations commenced later that year.

The 1997 Ordinance was substantially amended in 1999 and 2000 in order to introduce additional regulatory safeguards, drawn principally from the various legislative regimes by then enacted in the Australian States and territories. These more industry-specific principles better reflected the online activity being conducted by the Alderney licensees at the time, namely, Sportingbet and SkyBet. Many of the core features introduced into the Alderney regime at that stage have been carried forward into the current legislative framework.

- **Regulatory framework and arrangement**

Primary legislation, the Gambling (Alderney) Law, 1999, as amended, (hereafter referred to as ‘the Law’) provides that all forms of gambling are unlawful, unless authorised under an Ordinance of the States of Alderney (a form of subordinate legislation, albeit an act of the entire legislative assembly) made under powers contained therein. (The Law repealed and replaced the 1975 Law.) The Law also established an independent body, known as the Alderney Gambling Control Commission (hereafter referred to as ‘the Commission’) to license and regulate those forms of gambling that are made lawful by way of an Ordinance. The Commission’s duties also include “to keep under review the extent and character of gambling” in Alderney.

All forms of eGambling, are, subject to compliance with specified conditions, made lawful by virtue of the Alderney eGambling Ordinance, 2006, (hereafter referred to as ‘the Ordinance’), made by the States of Alderney in June, 2006. It came into force on 11<sup>th</sup> July, 2006 and replaces and combines two earlier Ordinances, (the Gambling (Interactive Gaming) (Alderney) Ordinance, 2001 and the Gambling (Electronic Betting) (Alderney) Ordinance, 2002, both as amended), which had provided separately for gaming and betting respectively. The 2002 Ordinance had, in turn, repealed and replaced the original Ordinance of 1997, as amended, which had dealt in part with electronic betting centres.

Apart from establishing the basic framework for lawful eGambling, the Ordinance contains a series of obligations and powers for the Commission to make Regulations. On 11<sup>th</sup> July, 2006, the Alderney eGambling Regulations, 2006, (hereafter referred to as ‘the Regulations’), were made by the Commission. These Regulations, since amended twice in minor ways, contain very detailed provisions which supplement the Ordinance’s basic framework. Therefore, when taken together, the Ordinance and the Regulations constitute

a complete framework for the licensing and regulation of all forms of eGambling operations conducted under an Alderney eGambling licence.

The Ordinance provides for the Commission to issue such written guidance as it considers appropriate for the purpose of providing information about compliance with the Ordinance and the Regulations made thereunder. To assist eGambling licensees with preparation of applications for approval of internal control systems, as required under the Ordinance and the Regulations, and regarded by the Commission as the most important post-licensing matter before a licensee can “go live”, the Commission has issued Guidelines for the Preparation of an Internal Control System (hereafter referred to as ‘the Guidelines’).

The legislation referred to here is available on the Commission’s website at <http://www.gamblingcontrol.org/index.php?page=25> and the guidelines are available at <http://www.gamblingcontrol.org/index.php?page=27>

○ **Values underpinning the regulation of eGambling**

The values underpinning the regulation of eGambling are:

- all electronic gambling on Alderney is conducted honestly and fairly;
- the funding, management and operation of electronic gambling on Alderney remains free from criminal influence;
- electronic gambling is regulated and monitored so as to protect the interests of the public.

These values are summarised in the mission statement set out in recent annual reports of the Commission which is available at <http://www.gamblingcontrol.org/index.php?page=32>

### **3. Introduction to the Commission**

Within the first year or so of granting electronic betting centre licences through its own Policy & Finance Committee, the States realised the importance of establishing a body external to government to perform duties associated with regulation and conferring on it all the powers essential to its licensing and regulatory functions.

The Commission appointed by the States of Alderney to license and regulate operators in the eGambling industry is an independent and non-political body. Three of the Commissioners who have been appointed come from outside Alderney and have experience of gambling, regulation and licensing. The fourth Commissioner is a local resident who, in addition to her particular experience in fraud detection and licensing, brings an Alderney perspective to the deliberations of the Commissioners.

The legislation gives the Commission the necessary powers to conduct wide ranging investigations, to obtain such information necessary to conduct its investigations, to gain access to licensed premises and to ensure compliance by monitoring and investigating the software, systems and business processes of its licensees.

The Commission has a staff of twelve people with appropriate experience in management, finance, legal, IT and regulation of the gambling industry. The staff has access to outside experts in the field of eGambling and works closely with international testing houses and with financial and legal consultants.

### **4. Licensing arrangements**

The licensing regime in Alderney has been developed to address the following:

- The need to prevent crime;

- The need to have legal jurisdiction over the licensed operator;
- The international nature of eGambling systems;
- The cross-border nature of the gambling transactions;
- The need to ensure that the management and other persons concerned with a licensed eGambling business are appropriate in terms of both skill and integrity.

Accordingly, the Ordinance empowers the Commission to issue the following types of licences and certificates:

- A **full eGambling licence** to an Alderney company which wishes, probably as part of a larger group of companies, to operate an eGambling business from Alderney;
- A **restricted use eGambling licence** to a non-Alderney operator enabling it to make occasional and temporary use of servers located in Alderney or Guernsey for the purpose of effecting gambling transactions under the stringent conditions attached to its exercise, designed primarily as part of the operator's disaster recovery package;
- An **associate certificate** by which the Commission approves a person during the currency of the certificate as being a fit and proper person to be associated with the operations of any eGambling licensee;
- A **hosting certificate** to a person enabling it to accommodate at its approved premises gambling equipment utilised by an eGambling licensee for its operations;
- A **key individual certificate** to a person who occupies or acts in a position designated as a key position or is an associate, or occupies or acts in a managerial position.

The licensing process seeks to satisfy the Commissioners that the applicant is a fit and proper person to hold a licence or certificate and, where applicable, that any associate of the applicant is a fit and proper person to be associated with the operations proposed by the applicant. Each type of licence has a particular purpose



and the range of them is designed to ensure that the Commission has a direct regulatory relationship with all the core elements of an eGambling operation.

A list of licensees and certificate holders is available from the Commission's website at <http://www.gamblingcontrol.org/index.php?page=4>

## **5. Keeping out crime**

One of the primary objectives of regulating gambling in Alderney has been, and will continue to be, to prevent crime and the influence of crime within its eGambling industry. This objective has been met over the ten years that eGambling has been permitted.

One reason why the Commission has been successful in keeping crime out of the industry is that, rather than attempting to reap the fiscal benefits of larger numbers of operators, Alderney has set out to attract operators who seek a comprehensive and tightly controlled regulatory regime. These are for the most part established, major gambling operators with brands they wish to protect. They are also the types of company most likely to conduct their businesses in a way that is consistent with the standing of Alderney and Guernsey as highly reputable financial services centres.

The primary defence against criminal involvement is to establish sufficiently high barriers to entry. Alderney's legislative framework, as operated by the Commission, has developed a reputation as one of the strictest in terms of licensing. This is mainly due to the Commission's thorough process of investigation into the backgrounds of operators, shareholders, beneficiaries, sources of funding, business associates, third party providers, key individuals and hosting providers.

Investigations are conducted by the staff of the Commission, with outside assistance where necessary. Comprehensive reports compiled following these investigations

enable the Commissioners to determine whether or not an applicant is ‘fit and proper’ to hold a licence. Investigations can include interviews with the key individuals and the Commissioners may also require their own meeting with representatives of the applicant before deciding whether or not to grant a licence.

The Commission has from its inception recognised the difficulty of regulating an international industry without the cooperation of other law enforcement bodies. The Commission has therefore sought to establish working relationships with other regulators and with domestic law enforcement agencies such as the Police, the Law Officers of the Crown and the Guernsey Financial Services Commission which has its own gateways to financial and criminal intelligence.

It adds particular comfort to the Commission to know that an applicant has good standing in another jurisdiction and it has been most helpful to enter into informal reciprocal arrangements for sharing information with other regulators.

Applications for licences are restricted to Alderney registered companies. This is to ensure that the licensee has a legal presence in Alderney, but it also enables the Guernsey Financial Services Commission to look into the suitability of shareholders, beneficiaries, associates and key individuals associated with a potential licensee as part of the incorporation process. This provides a valuable additional level of scrutiny and helps to inform the Commission’s own investigations.

The granting of a licence, although very important, is only a finding of the general suitability of the operator. It does not imply permission to commence operations. Before licence holders can commence operations, they are required to obtain approval for both a detailed internal control system and for all gambling equipment. An advantage of this phased approach is that it provides a further opportunity for the Commission to ensure that the licensee has the experience, ability and resources

to conduct eGambling successfully and in such a way as to keep crime out of its operations.

Documentation of an approved internal control system contains a comprehensive account of the licensee's entire operation and may run to several hundred pages. Of particular significance in any internal control system is a requirement to confirm how a licensee will handle key issues such as anti money laundering provisions and the protection of minors. The approval process enables the licensee's detailed operating plans to be reviewed and, if necessary, changed through dialogue with the Commission. Similarly, a detailed review of gambling equipment ensures the fair conduct of games.

After a licensee has commenced operations under its eGambling licence, the Commission monitors its operation and periodically checks compliance with the approved internal control system. This ongoing regulation is designed to ensure that any potential criminal activity or influence continues to be kept out of all parts of the Alderney licensed operation.

## **6. Ensuring that gambling is conducted in a fair and transparent manner**

The States of Alderney believes that customers of operators licensed in Alderney should be able to gamble secure in the knowledge that the games and other gambling transactions offered are fair, that their money is safe and that the licensees (and, if applicable, their associates involved in the delivery of the services) are reliable.

The Ordinance therefore contains powers which enable the Commission to protect the interests of the customer with regard to game fairness, clear and transparent terms of the contract with the operator, protection of customer funds, a clear statement of the rules of the games and, most importantly, provisions enabling the

customer to address complaints and disputes to an independent body. These are matters that licensees must cover in their approved internal control systems and which play a prominent part in the Commission's monitoring and inspection processes.

In addition, Alderney has addressed the inevitable inequality of bargaining power within gambling transactions by seeking to ensure that the customers of its eGambling licensees will not be subjected to disadvantageous trading practices and that the monies held on their behalf are secure and available for return upon legitimate demand. The legislative framework in Alderney is intended to strike a suitable balance: ensuring player protection whilst encouraging genuine entrepreneurial flair and competition between licensees. In doing so, the States of Alderney has sought to guard against the artificial imposition of unnecessarily burdensome regulation whilst creating a sufficiently robust set of absolute requirements and other "fairness choices" to ensure a more than adequate level of customer comfort.

In short, the regulatory framework established in Alderney ensures that:

- The terms under which customers gamble are clear;
- There is comfort in the financial probity and reliability of operators;
- The funds of customers are protected;
- Clear procedures for the transfer of monies and payouts to customers are in place;
- Rules of gambling are clear and easily accessible;
- Credit may be extended to customers only when appropriate;
- Procedures for dealing with customer complaints and disputes are provided;
- Approval of the licensee's gambling equipment and games is an essential requirement;
- Approval of the licensee's internal control system provides a basis for the regulatory regime;
- Hosting premises are approved;

- Appropriate registers are maintained;
- Customer privacy and data protection principles are observed;
- There is maximum flexibility in the regulatory framework so that it can evolve swiftly to encompass technological and other changes.

## **7. Protection of children and the vulnerable**

The Commission requires gambling operators to conduct their businesses in a socially responsible manner. It is recognised that although gambling forms part of the leisure and entertainment industry in most parts of the world today, it presents certain special risks, particularly with regard to children and vulnerable persons, including the risk of addiction.

One of the fundamental conditions for a gambling transaction under an eGambling licence to be lawful (section 1(b) of the Ordinance) is that it “is not effected by, with or through a young person”, i.e. someone under 18 (section 20(1) of the Law). Furthermore, the Commission is obliged by section 20(2)(e) of the Ordinance to make regulations, which it has, enabling a customer to impose limitations on his gambling activity with a licensee.

Within these basic premises, the Commission believes that the measures required for protecting children and the vulnerable are different. Measures aimed at preventing children from gambling typically focus on registration and/or participation as a customer (i.e. barriers to entry that are put in place by the licensee), whilst measures aimed at protecting the vulnerable tend to involve a combination of warnings to customers about the dangers of gambling, reports available to customers which set out the details of their gambling, systems that enable customers to restrict their gambling in various ways and readily available information as to where to obtain help if needed.

The Commission's experience has been that gambling addiction amongst adults seems to be more of a risk than children wishing to access gambling sites. During the seven years that the Commission has been regulating the industry, it has not had any complaints from parents about a young person who has managed to gain access to an eGambling licensee's site. It is public knowledge that when Gamcare in the UK, posing as minors, tried to gain access to the sites of eGambling licensees based in Alderney a few years ago, they found it very difficult. The main reason for Alderney licensees' success in keeping minors out is the use of third party verification software by most licensees. Although it is not an absolute requirement to do so, the Commission encourages its licensees to make use of such third party verification systems because they have been shown to be very effective, particularly in relation to prospective customers from the UK, where these third party verification providers have access to reliable demographic data.

Despite this encouraging success, the Commission still regards the possibility of children gaining access to gambling sites as a major risk and continues to monitor systems that will provide additional protection.

As regards the protection of potentially compulsive customers, the Commission's experience indicates that the customer's ability to make informed choices, to have information readily available regarding spending patterns and to have access to an independent body if aggrieved, are all significant measures towards reducing the risk of compulsive gambling.

Common to the twin concerns to protect minors and compulsive gamblers is the prohibition of inappropriate advertising. Accordingly, licensees are required to comply with the Commission's guidelines on advertising, which are intended to make sure that advertising by licensees or their agents is not aimed at minors and does not create false expectations.

## 8. Closing remarks

Having been involved in the regulation of eGambling for the past five years in the manner described above, I have no doubt that:

- The eGambling industry can indeed be regulated in an effective way;
- Due to its electronic nature of internet gambling, where there is always a clear audit trail for every transaction, I am of the opinion that it is easier to regulate eGambling than it is to regulate terrestrial gambling;
- The regulation of the industry is the only way of effectively protecting the consumer. Neither the prohibition of the industry nor the introduction thereof on a self-regulatory basis is in the interest of the consumer. History has shown that people gamble irrespective of whatever form of prohibition is introduced. Similarly, operators that are not subject to any form of independent regulation may not always act in the best interest of the player.

I am available to provide further information to your Committee, as well as to other Members of Congress, regarding my experience with the regulation of eGambling.

Mr. Chairman, I thank you and the Committee for its time and appreciate the opportunity to submit my remarks for the record.

Prepared by:

André Wilsenach  
Chief Executive Officer  
Alderney Gambling Control Commission  
Maison des Vennelles  
Alderney  
GY9 3HT

E-mail: [andre@gamblingcontrol.org](mailto:andre@gamblingcontrol.org)

Telephone: +44 (0)1481 823967

Fax: +44 (0)1481 823978

Web: [www.gamblingcontrol.org](http://www.gamblingcontrol.org)