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Citation: Carran, M. (2025). Online Self-Exclusion – Recommended Code of Practice (CLS Working Paper Series 2025/04). London, UK: City Law School.

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Online Self- Exclusion – Recommended Code of Practice

CLS Working Paper Series 2025/04

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London, Northampton Square, London, EC1V 0HB.

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Online Self – Exclusion – Recommended Code of Practice

Margaret Carran

Abstract

Voluntary self-exclusion is one of the oldest and most prevalent tool that jurisdictions with regulated gambling almost uniformly expect to be available to players either through national self-exclusion registers and / or through gambling operators' schemes. As an element of their overall social responsibility toolbox, it is an important measure to minimise harm and to allow players to take an effective break from gambling that may cause harm.

However, the relative uniformity of the expectation that self-exclusion should be available ends here. Each jurisdiction sets their own specific rules relating to the duration of self-exclusion, initiation and termination, and what responsibilities accrue to players and operators following such self-exclusion. Furthermore, no best practice has yet been identified that could be applied internationally and current evaluation of effectiveness of existing schemes is limited. As such significant variations continue to exist across different states and very limited evidence is available as to what is indeed effective with helping players avoid gambling-related harm.

This voluntary self-exclusion Code has been devised by a group of passionate, international experts in order to support regulators, operators and other stakeholders in being able to identify best practices that are capable of being applied globally within many different jurisdictions. The project is a culmination of extensive work carried out in three phases – (1) international literature review, (2) task and finish working group composed of all stakeholders' representatives covering three different continents and (3) wide ranging international consultation on the draft recommendations.

Keywords: gambling self – exclusion, online, regulatory intervention, recommended legal text for adoption.

Introduction

Voluntary self – exclusion schemes facilitate binding agreements between gamblers and gambling operators. Players voluntarily undertake to refrain themselves from engaging in excluded forms of gambling and gambling operators undertake to prevent them from accessing those for the duration of the exclusion period. Self – exclusion schemes perform a number of functions. They operate as harm – minimisation measure that is intended to help players, who suffer from gambling related harms, to eliminate access to the source of their difficulties. They contribute to gambling operators ensuring that their services are offered sustainably and they help regulators and policy makers to demonstrate their commitments to safer gambling.

Self – exclusion is the oldest social responsibility tool¹. The scheme was invented by the industry itself but soon it became a mandatory requirement in many jurisdictions with legalised gambling. Operators were directed to offer them to their customers, often under a threat of a legal sanction. It typically constitutes part of operators' licence terms and conditions, breach of which may lead to the removal of the gambling licence, regulatory fines, or other penalties². Originally, operators developed and offered self-exclusion schemes individually. However, over the last decade several countries introduced national self-exclusion registers. Broadly, those allow players to exclude themselves from all operators licenced in the given jurisdiction, but some variations also exist. National registers allow players to self – exclude themselves from all operators with one registration but it is still the operators' duty individually to detect any potential attempts by those players to gamble and to preclude them from succeeding. A well – functioning self – exclusion scheme should adequately balance the protection of the players with the ability of the industry to operate sustainably. It should be available to those who need it, when they need it and should effectively assist players to stop gambling without any stigmatising connotations at a cost that is reasonable to the industry.

This ideal is still far from being achieved. One of the reasons is lack of internationally accepted standards that would be adopted across different jurisdictions. There is no international convention or other pan-national agreement that would harmonise how self-exclusion should operate, and each jurisdiction determines this for each self. In federal states specific requirements may differ even between individual parts of the same country as gambling regulations are sometimes devolved to local governments. Localised attempts have been undertaken to amend this position but those have not yet fully succeeded.

¹ T Hayer, G Meyer, 'Self-Exclusion as a Harm Minimization Strategy: Evidence for the Casino Sector from Selected European Countries' (2011) 27 Journal of Gambling Studies 685

² See e.g., UK Gambling Commission Licence Terms and Conditions, latest edition.

For example, within the European Union, the European Commission Recommendation 2014/478/EU aimed to initiate harmonisation of online gambling rules across the European Member States. It recommended that self – exclusion should be available to all players for a minimum period of 6 months³, encouraged Member States to create national self – exclusion registers⁴, specified that self – exclusion should generally be initiated by the players' themselves⁵ or, if that was too restrictive, Member States should prescribe specific rules relating to third parties' exclusion⁶.

The Commission's recommendations were broad in nature, relatively rudimentary and were intended to apply in countries based in relatively small geographical territory. They still have not been consistently adopted, and significant variations continue to exist not only within the EU but everywhere. The variations are not confined to specific rules on how such schemes should operate but extend to even the most fundamental question of whether self – exclusion should be mandatorily prescribed or not and whether it should be administered by operators themselves or nationally through centralised registers, or both. While offering self – exclusion is a common licence condition in most jurisdictions with legalised gambling, this is not yet a universal requirement. In countries without such legal provisions, operators may wish to offer it on a voluntary basis. However, unless all providers within the relevant State offer it, those that do may lose out commercially to other competitors making it less likely to be available overall.

The most acute differences are buried in the details. They relate to the following:

- The duration of the schemes: those vary from 24 hours to permanent / lifetime exclusions. The minimum durations of 24 hours or 7 days exist in jurisdictions that do not use different terminology to describe self – exclusion 'proper' and temporary 'time-outs'. The maximum duration varies from 12 months to indefinite periods. Permanent or life – time exclusions are allowed in some countries but not in all. In those where they do exist, they are not necessarily permanent despite their titles but may be limited to a duration of 5, 7 or 12 years.
- Revocability of self – exclusion: in some jurisdiction's temporary self – exclusion is irrevocable during its duration while in others it may be revoked either with or without prior conditions having to be met. This is further complicated legally as sometimes a revocation may be deemed to be valid even though it is not formally permitted⁷.

³ EU Commission Recommendation 2014/478/EU, Art.33

⁴ EU Commission Recommendation 2014/478/EU, Art.37

⁵ EU Commission Recommendation 2014/478/EU, Art.35

⁶ EU Commission Recommendation 2014/478/EU, Art.36

⁷ See, e.g, the decisions of an English court in the case of the Ritz Hotel Casino Ltd v Al Geabury [2015] EWHC 2297

Permanent or life – time exclusion can typically be revoked but the conditions for revocation and minimum durations that must elapse differs.

- How self – exclusion terminates: in some places, self – exclusion terminates automatically upon expiry of the stipulated period and the player can resume gambling without any additional actions. In others, self – exclusion only terminates when a player takes an ‘active step’ to withdraw from the scheme. However, there is no consensus of what such ‘active step’ should entail.
- Whether self – exclusion needs to be initiated by the players themselves or whether it is possible for third parties to exclude someone else without their permission. In many countries, self – exclusion can only be initiated by the individuals who want to be excluded but, in some states, third – party exclusion is permitted. Third parties typically include operators, family members or other affected stakeholders. In some countries a court order is necessary but in others it can be effected at the instance of a third party alone. In some jurisdictions, specific individuals such as those in receipt of social benefits or professionals such as judiciary⁸ or government officials⁹ are barred from gambling by statutory provisions.
- Rules relating to initiation and termination of self – exclusion: those can be mandated by law or can be devised by the licence holders.
- Consequences for breaches of self – exclusion. Those vary from no legal consequence through to criminal liabilities¹⁰.

The rationale for the continuing existence of the aforementioned variations is difficult to discern. They can be explained by the protracted and controversial history that saw online gambling legalisation or recent reforms occurring at different times and being underpinned by different priorities of individual countries. Regulations regarding safer gambling measures were designed and implemented locally with or without reference to what was already adopted in other places, implicitly embedding variations as an inherent and unavoidable feature. While this explains the current status quo, it does not justify it. Indeed, the continuing acceptance of such a position is surprising. The variations were less problematic when gambling was a predominantly land – based activity but even then, it was not uncommon for gamblers to travel to neighbouring countries to access land – based casinos in another jurisdiction¹¹. This was likely to be feasible only for individuals whose residence was relatively close to their

⁸ E.g., Belgium

⁹ E.g., Philippines

¹⁰ M Carran, ‘Consumer Protection in EU Gambling Regulations – Review of the implementation of selected provisions of the European Commission Recommendation 2014/478/EU across EU Member States. Follow up Study’, November 2021.

¹¹ S Lischer, J Schwarz, ‘Self-exclusion and Imposed Exclusion as Strategies for Reducing Harm: Data from Three Swiss Casinos’ (2018) Journal of Gambling Issues 000.

geographical borders or while on holiday, but this no longer represents a significant aspect. What is a current issue is the massive proliferation of online gambling that is accessible without physical constraints. This means that substantially greater number of players may be exposed to a variety of practices and degrees of safety standards, and they may be expected to follow different processes of various levels of difficulties and complexity.

Theoretically, this may be argued to be irrelevant. With the exception of a small number of jurisdictions, which operate on a reciprocity basis with other white-listed countries, most legalised frameworks require operators to be licensed in the jurisdictions in which they target players. As a result, any given player should only be exposed to one set of safer gambling tools, those of their home country. In reality, however, evidence shows that players may access not only the websites that are entirely unlicensed and inherently illegal but also those that are regulated but by a different state. Evidence collected by Casino Guru shows that affiliate websites commonly receive traffic from search engines that look for 'best online casinos' irrespective of their licence status. The analysis carried out by Ahrefs.com estimates that searchers for specific operators without a local licence range from 6% to 98%¹². Those include searches for online casinos that are unregulated and / or based outside the searcher's jurisdictions and those that can be accessed with or without VPN connection. While no robust evidence could be identified as to whether those sites are subsequently accessed for the purpose of money gambling, it is legitimate to assume that this may be the outcome for many of those.

The above are not the only reasons as to why standardisation of safer gambling tools would be highly beneficial not only in the context of individual player's protection but also for regulators, researchers and other stakeholders. Harmonisation of approaches, especially if coupled with a longer period of stability of any regulatory regime would contribute to a more robust and accurate evaluation of the effectiveness of self – exclusion schemes and this could, over time, lead to a development of global standards. This, in turn, would better support evidence – based regulatory and policy approaches and could facilitate the creation of a global self – exclusion register. It would also help address another significant issue that is often not openly expressed. This refers to the lack of clear, precise and consistent articulation of the actual purpose of self – exclusion schemes and other safer gambling initiatives. Some focus on harm – minimisation at the population levels while others highlight the benefits that accrue to individuals¹³. This is also detrimental as effectiveness may be tested against some abstract notion as to what the safer gambling tools are supposed to achieve and with a potentially

¹² Casino Guru data, August 2023; ahrefs.com, last retrieved September 2023.

¹³ L Kraus, et al, 'Self-Exclusion from Gambling – A Toothless Tiger' (2022) *Front. Psychiatry* 13:992309. doi: 10.3389/fpsy.2022.992309

different perceptions of the measure of success¹⁴. This then often leads to different understanding of what represents a good practice and opens the opportunity for narratives that are intended to advocate specific points of view.

Easy solutions to those issues do not exist. Any harmonisation of rules would require a significant amount of international co-operation for which there does not seem currently to be much political appetite. However, the prevailing notion that self – exclusion schemes are well established and therefore do not require any further consideration should be dispelled. While several recommendations can already be found in existing literature they tend to focus on land-based self – exclusion in specific countries¹⁵; on specific forms of gambling¹⁶; or they derive proposals based on the views of selected stakeholders only¹⁷.

This project, whose recommendations and report appears below, is different. It was formed in 2023 out of a collective sense among various stakeholders that although self – exclusion schemes operate reasonably well in many places; this is not a universal position. There is still a basic need to establish common standards that would be suitable for adoption by any country and ones that are devised with references to views from all stakeholders. While many countries have their specific rules, there is no single document that would outline the ingredients of an optimal and effective scheme that could operate as a reliable reference point for jurisdictions that are currently developing their rules. The operation of existing schemes may also be improved and refined considering the technological advances and a dramatic expansion of gambling opportunities. In recognition of that, an international project working group was formed to address this gap and to devise a code of recommended practice that would be culturally natural as to be suitable for adoption in any jurisdictions that offers online gambling.

The project itself is underpinned by the desire to achieve several interrelated aims. The first primary objective is to encourage the provision of self – exclusion in all jurisdictions, irrespective of whether such schemes are mandatorily required or not. The project aims to nudge regulators or policy makers in jurisdictions where self – exclusion is not legally mandated to impose such a requirement on their gambling industry. The recommended Code

¹⁴ V Marionneau, J Jarvinen-Tassopoulos, 'Consumer Protection Licenced Online Gambling Markets in France: The Role of Responsible Gambling Tools' (2017) 25(6) *Addiction Research and Theory* 436

¹⁵ SM Gainsbury, 'Review of self – exclusion from Gambling Venues as an Intervention for Problem Gambling' (2014) 30 *Journal of Gambling Studies* 229

¹⁶ A Thomas, R Carson, J Deblaire, AA Armstrong, Sh Moore, D Christese, A Rintoul, 'Review of Electronic Gaming Machine Pre-Commitment Features: Self – Exclusion' Australian Government, Australian Institute of Family Studies (2023), republished with corrections in 2016.

¹⁷ J Parke, J Rigbye, 'Self – Exclusion as a Gambling Harm Minimisation Measure in Great Britain: An Overview of the Academic Evidence and Perspective from Industry and Treatment Professionals', Responsible Gambling Trust, 2014.

of Practice aims to facilitate this as it provides an ‘off the shelf’ solution that can be implemented in entirety or partially. It outlines in one easy document the recommended guidelines using wording that has been carefully drafted to ensure easy translation into other languages and to minimise any specific cultural undertones. In jurisdictions with established self – exclusion schemes, it aims to highlight the need for further discussions among the industry and the regulators / policy makers as to what represents best practice and to encourage standardisation of the requirements. The members of the project group are passionate about players’ protection and hope that our recommendations will prompt regulators to re-evaluate their existing schemes and to consider to what extent their practices could be aligned for the benefit of all international stakeholders.

The project’s secondary purposes stem from the wish to further contribute to the efforts already undertaken by the regulators and the industry to destigmatise the use of self – exclusion and other safer gambling tools. As it has been eloquently pointed out by Thomas et al¹⁸ there are “*many cultural barriers for some people*”¹⁹ but stigmatising language continues to be used. This remains so even though gambling disorder²⁰, since 2013, has been formally classified as a substance based psychiatric disorder that may affect anyone engaged in gambling regardless of their actual or potential vulnerability status or individual characteristics and one that individuals may find very difficult to recover from in the absence of additional help²¹. Therefore, our recommended code of practice also contains provisions that aim to facilitate the design of self – exclusion schemes in a manner that should contribute to the normalisation of online SE as a tool for harm – minimisation and in a manner that reduces negative connotations associated with its usage.

¹⁸A Thomas, R Carson, J Deblaquiere, A Armstong, ‘Review of Electronic Gaming Machine Pre-Commitment Features: Self – Exclusion’ (2016) Australia Government, Australian Institute of Family Studies, Australian Gambling Centre

¹⁹ Ibid (ref 18)

²⁰ DSM-V (2013)

²¹ MA Carran, ‘Gambling Regulation and Vulnerability’ (2018) Elgar Studies in Law and Regulation, Edward Elgar Publishing