

THE GAMBLING LAW
REVIEW

FOURTH EDITION

Editor
Carl Rohsler

THE LAWREVIEWS

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REVIEW

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PREFACE

Welcome to the fourth edition of *The Gambling Law Review*.

One of the issues I have been wondering about while reviewing the fourth edition of *The Gambling Law Review* is what might be described as the Sorites paradox in reverse.¹ First editions of books may well be the ones that are the most collectable, but they are probably not the most valuable for the reader. In years two and three, as an edition gathers size and age, it becomes established. But at what point does it stop being a project and become a tradition, an institution or (the ultimate accolade for any legal study) an authority?

I think it would be wrong to say that we are an authority yet. But, there are some very encouraging signs. We have new and notable contributions from Austria, Hong Kong and Cyprus. One must also mention those who have had to perform substantial re-writes, as with Malta, since the legislation there has been subject to considerable change.

This year, therefore, I am pleased again to say that the scope of coverage has increased to 30 chapters. So we may not yet be 'authoritative', but I hope that readers will agree that we are very well established. I am delighted to welcome the new authors and thank them each for their very valuable contributions, as I am also very pleased to thank those who have had found the time and resources to continue contributing to this work.

The primary purpose of this work is to provide a short summary of the gambling law of a wide range of jurisdictions and, so far as possible, to achieve that through a format that is both uniform enough to allow a comparison of the different legal systems but is also flexible enough to recognise that gambling law finds its home in different places depending upon the legal system in question. In some countries, it is founded in the criminal law, in other places it forms part of civil or administrative law. It is sometimes rooted in a common law and sometimes in a civil code tradition.

The second aim is to allow practitioners in the field to be updated on developments over the course of the year – with a section in each chapter dealing with both the main milestones of the last 12 months and the likely developments to come. And last, of course, it is a good way to bring together some of the leading lawyers in this fascinating field, so that they can stay in touch and communicate with each other – forming a network of knowledge and contacts upon which I hope our respective clients will rely.

Looking back, it feels as though the world has been a very busy place over the last 12 months. It is tempting to say that such a statement is just an error of perspective, and that

¹ Eubulides of Miletus is said to have conjectured about taking consecutive grains away from a pile of sand. When does the heap cease to be a heap and become merely a pile? The Sorites paradox takes its name from the Greek word for 'pile'.

in fact every year has its fair share of excitement – but events in America (both in the world of gambling and also more widely in politics), and the chaos of Brexit, which still surrounds me as I write, seem to justify putting 2018/19 into a special category.

But while the political environment seems to have been particularly fraught, political matters are often cyclical, reflecting movements between different ideologies and oscillating social attitudes. The more important changes have actually been technological, since they almost always lead to dramatic and irreversible changes.

So, let us focus on some important statistics. During 2018, the number of internet users in the world exceeded 4 billion (a 7 per cent year-on-year increase). Pausing there, that means that in 2018, more than 280 million people went online for the first time. Those new internet users, if brought together geographically, would form the fourth largest national population in the world.

In the same 12-month period the number of social media users increased by 13 per cent to 3.1 billion. Furthermore, during 2018 the world reached a total of more than 5.1 billion unique mobile phone users, meaning that two thirds of the world's population has access to mobile communication, with more than half of the handsets being smartphones. Mobile use has indeed eclipsed laptops and desktop computers. Internet penetration in Western Europe is at 92 per cent and in North America it is 88 per cent. Soon, everyone will have access to everything. And the everything is being delivered much more quickly. Average fixed internet speeds increased between 2017 and 2018 from 22Mbps to 46.12Mbps, an average of 26 per cent.

The amount of data we produce each year (about 16 zettabytes²) is already much more than would be necessary to record every word ever spoken by our species. In other words, the technology, and the ability to process, manipulate and model the universe mathematically has gone well beyond a tipping point, and is rapidly creating the environment for databases and networks of neurological scale, and a whole new way of thinking – artificial intelligence.

Those changes have created new possibilities in many fields, including the development of the worldwide gambling industry. Distributed ledger technologies and, in particular, bitcoin was first created in 2009. Ten years later, they have already become sufficiently prominent that gambling regulators have been forced to consider and regulate their use. Given that acceleration, it will surely be only a matter of four or five more years before they become a mainstream form of consumer currency. Second, artificial intelligence is beginning to show its worth as a way of automating some of the processes that most concern operators and regulators: social responsibility, player verification and anti-money laundering. To give one example, automated age verification by use of facial recognition technology is likely to become a practical reality in the next 12 months. At present, many operators are still using some fairly crude flags to indicate when a player is gambling unwisely or acting suspiciously and most of these have ultimately to be judged by fallible humans. We can expect, as the number of data points increases and the ways of assessing behaviour become more subtle, that standards will be able to be created through the use of automated tools to make player identification, monitoring and self-exclusion a much more scientific, accurate and objective process.

Another area where technology is creating change is in the environment in which gambling takes place. There was a time when gambling was confined to casinos and other

2 A zetterbyte is a trillion gigabytes, or 1,000,000,000,000,000,000 bytes.

specific premises. Then the internet allowed gambling to become home-based for the first time, and there were increasing attempts using live-dealer experiences and virtual reality to mimic premises-based gambling but with the comforts of home. Next, we saw the diversification of gambling products and a blurring of the whole entertainment space, with social gaming and e-sports creating completely new kinds of experience, and we have also seen a return to premises-based entertainment, but where a fusion of technologies mean that games can be played seamlessly from device to premises, on a single account. In other words, the ubiquity of gambling behaviour has become like the ubiquity of mobile technology and social media itself.

At the same time as these technological changes are democratising access to gambling, the 'grey' markets are drying up. More and more legislators are addressing themselves to the regulation of international gambling and the creation of models for regulation and taxation. The Wild West of 20 years ago has become a tamer place. Also, while the dominance of certain social media technologies is creating opportunities, it is also effectively restricting diversity of approach down into necessary and fewer effective routes to market. In other words, to be effective, gambling operators need not only the approval of their regulators, but also, increasingly, the companies that allow them to deliver their product. Many opinions on the legality of operations are now being drafted not to convince regulators but more to persuade banks and media providers of a product's legality. The industry faces an ongoing challenge to ensure that big business views gambling operators as a legal and acceptable form of entertainment and commerce. The need for the industry to remain a convincing advocate of its own propriety has never been greater.

In the context of these changes, there is surely an important place for an annual review of the world of gambling law. I close by thanking my co-authors and the editorial team at *The Law Reviews*, for their organisation and encouragement. I very much look forward to our fifth edition, with still more content and diversity, by which time I will formally have decided that the *Gambling Law Review* has indeed developed into an authority.

Carl Rohsler

Memery Crystal

London

May 2019

IRELAND

Alan Heuston and Seán Dowling¹

I OVERVIEW

i Definitions

Many forms of gambling have been regulated in Ireland for centuries. Irish law distinguishes primarily between three main forms of gambling: betting, gaming and lotteries.

Betting

Betting is governed by the Betting Act 1931, as amended by the Betting (Amendment) Act 2015 (the Betting Acts).

The word 'bet' is not defined in Irish law. Instead, the Betting Acts state that '... the word bet includes wager . . .'. The scope of what constitutes a bet has fallen to be determined at common law by the courts, although case law is rare. In *Mulvaney v. The Sporting Exchange Ltd trading as Betfair*,² Clarke J stated that:

While bookmaking is not defined in that legislation it seems to me that the term bookmaker derives from a person or body 'making a book' on an event. In other words, the person or body concerned offers odds on all or a significant number of eventualities arising in respect of the same event (for example, offers odds on each horse winning or offers odds on either team winning a football game, or, indeed that game resulting in a draw). Thus, a person carrying on the business of bookmaking is someone who habitually offers to cover a range of possible eventualities on future uncertain events. Two private individuals entering into a wager on the same future uncertain event could not remotely be said to be engaged in the business of bookmaking.

Accordingly, the general consensus arising from case law is that betting encompasses a bookmaker setting fixed odds against a future event, taking bets on that event and paying out winnings.

Gaming

Gaming is governed primarily by the Gaming and Lotteries Acts 1956–2013 (the Gaming and Lotteries Acts).

Gaming is defined in the Gaming and Lotteries Acts as 'playing a game (whether of skill or chance or partly of skill and partly of chance) for stakes hazarded by the players'.³ A stake is

1 Alan Heuston is a partner and Seán Dowling is an associate at McCann FitzGerald.

2 [2009] IEHC 133.

3 Gaming and Lotteries Act 1956 Section 2.

defined as including ‘any payment for the right to take part in a game and any other form of payment required to be made as a condition of taking part in the game but does not include a payment made solely for facilities provided for the playing of the game’.⁴

Lotteries

Lotteries are permitted by the Gaming and Lotteries Acts, but are heavily regulated and there are restrictions on their operation. As per the Gaming and Lotteries Acts, a lottery ‘includes all competitions for money or money’s worth involving guesses or estimates of future events or of past events the results of which are not yet ascertained or not yet generally known’.⁵

The Irish National Lottery falls outside the scope of the Gaming and Lotteries Acts and, instead, is regulated by the National Lottery Act 2013 (the 2013 Act), which repealed and replaced the terms of the National Lottery Act 1986. In 2013, following a competitive tender process, the Irish government awarded a 20-year licence to operate the Irish National Lottery to a consortium involving An Post (the Irish post office) and led by the UK national lottery operator, Camelot. The most notable feature of the 2013 Act is the establishment of a new office, the Regulator of the National Lottery, whose primary functions are to ensure that the Irish National Lottery is run with all due propriety, to ensure that participants’ interests are protected and to ensure that the long-term sustainability of the Irish National Lottery is safeguarded.

Tote/pari-mutuel betting

The Totalisator Act 1929 provides for the establishment and regulation of the Totalisator⁶ by the Irish Revenue Commissioners. The Irish Horse Racing Industry Act 1994 provided that the Irish Horse Racing Authority could apply for and hold a totalisator licence. This was later transferred to Horse Racing Ireland by the Horse and Greyhound Racing Act 2001, and the licence is currently held by a subsidiary of Horse Racing Ireland called Tote Ireland. Tote Ireland’s current licence is due to expire in 2021. Bord na gCon (the national greyhound board) is licensed to operate a totalisator at greyhound tracks.

Financial spread betting

Spread betting on financial instruments is governed by the Markets in Financial Instruments Directive (2004/39/EC) and regulated by the Central Bank of Ireland.

Prize bonds

Irish Government Prize Bonds are regulated separately from other forms of gaming and lotteries. They are described in the Finance (Miscellaneous Provisions) Act 1956 as non-interest

4 ibid.

5 ibid.

6 Defined in the Totalisator Act 1929 as ‘an apparatus or organisation by means of which an unlimited number of persons can each stake money in respect of a future event on the terms that the amount to be won by the successful stakers is dependent on or to be calculated with reference to the total amount staked by means of the apparatus or organisation in relation to that event but not necessarily on the same contingency, and the said word includes all offices, tickets, recorders, and other things ancillary or incidental to the working of the apparatus or organisation’.

bearing securities that are 'subject to such conditions as to repayment, redemption or otherwise as [the Minister] thinks fit and in relation to which chance may be used to select particular securities for prizes'.

Pool betting

There is no equivalent in Ireland to the types of pool betting licences (non-remote and remote pool betting licences) that can be obtained from the UK Gambling Commission and that can be used by operators to provide pool betting or fantasy sports products. Instead, if an operator in Ireland wishes to provide a pool betting or fantasy sports product in which the amount of money won by the successful customers is calculated by dividing the total pool (minus commission) by the number of winners, it would be necessary to analyse the characteristics of the product to determine whether it could be characterised as a bet or a game under Irish law.

Betting on lotteries

There is no specific licence in Ireland for betting on the outcome of lotteries. There are a number of operators offering such products to Irish consumers under a remote bookmaker's licence. There is no prohibition on betting on the result of the Irish National Lottery.

ii Gambling policy

Although gambling has a long history in Ireland, the Irish authorities have recognised that the legislation governing gambling requires modernisation.⁷ As currently drafted, betting (remote, non-remote and intermediary) is permitted where a licence has been issued under the Betting Acts. Gaming and lotteries (except for the National Lottery) are primarily governed by the Gaming and Lotteries Acts. However, under the Gaming and Lotteries Acts, gaming is prohibited unless it falls under one of the exemptions contained in the Acts.

Those exemptions broadly relate to gaming that takes place in circuses, carnivals and amusement halls, and gaming that is operated in a certain way. The Gaming and Lotteries Acts have not been updated to take account of internet gaming. It is, however, common for operators that are lawfully licensed overseas to offer online gaming services to Irish customers provided that the gaming contracts are not governed by Irish law.

There is a political desire to modernise Irish gambling law. On 15 July 2013, the government published the heads of the Gambling Control Bill 2013 (the Scheme), which, if enacted, would have modernised Ireland's legislative framework for all types of online and land-based gambling. However, in early 2018, media reports indicated that there are plans to scrap the Scheme and prepare and publish a new, updated Scheme, on the basis that the original Scheme is now considered outdated and no longer fit for purpose. In March 2019, the government approved the establishment of a gambling regulatory authority and the publication of the Gaming and Lotteries (Amendment) Bill 2019 (the '2019 Amendment Bill'), which provides for the long overdue modernisation of the Gaming and Lotteries Acts. See Section VIII, below, for further information.

The Irish National Lottery is designed to raise money for charities and good causes.

⁷ Department of Justice and Law Reform, Options for Regulating Gambling (December 2010) 3.

iii State control and private enterprise

For the most part, gambling in Ireland is the subject of private enterprise and the normal principles of free competition apply. Private citizens and companies, whether based in Ireland or abroad, are entitled to apply for a betting licence subject to fulfilling the various requirements to obtain a licence. The main exception to this policy is the Irish National Lottery, which is the subject of the 2013 Act, under which a single licensee is chosen to operate the Irish National Lottery following a competitive tender.

iv Territorial issues

Where regulated, gambling is generally regulated nationally. There are generally no special states, municipalities or localities in Ireland that have separate gambling legislation. Northern Ireland is part of the United Kingdom and its gambling laws are separate to those of the Republic of Ireland.

v Offshore gambling

Offshore gambling operators who offer betting services or betting intermediary services by remote means to Irish citizens are required to obtain either a remote bookmaker's licence or remote betting intermediary's licence from the Irish authorities under the Betting Acts. Remote in this context is described as meaning, in relation to a communication, any electronic means including the internet, telephone and telegraphy (whether wireless or not).⁸ It is clear from the list of operators who have obtained the necessary licences⁹ that there is a significant number of offshore gambling operators offering betting products to Irish citizens.

Online gaming products (e.g., casino, slots, bingo) are governed by the Gaming and Lotteries Acts, although the legislation has not been updated to take account of online internet gaming. The focus of the Gaming and Lotteries Acts is on gaming carried out in amusement halls, arcades, funfairs, carnivals, travelling circuses and slot machines and therefore quite how it is to be applied to the type of games offered online is unclear. However, it is common for operators who are licensed in other jurisdictions to offer online products to Irish customers. It is important in such circumstances that the contract between the operator and the Irish customer is not governed by Irish law. Operators should also be aware that the Gaming and Lotteries Acts prohibit the promotion, advertising and the provision of unlawful gaming products so it is important that operators are familiar with these provisions.

The Irish Revenue Commissioners actively monitor compliance by remote operators with the licensing regime that applies for remote bookmakers and remote betting intermediaries. We are aware that the Irish Revenue Commissioners have actively pursued operators who have not registered as remote bookmakers and remote betting intermediaries. In addition, we are also aware that the Irish Revenue Commissioners actively follow up with operators if they are not registered and paying remote betting tax, remote intermediary duty and VAT on e-gaming activities, and have wide-ranging powers in order to ensure compliance.

Under the Betting Acts, the Irish Revenue Commissioners have the power to issue compliance notices to third parties who provide facilities or services (e.g., advertising, internet service provider (ISP), telecommunications, payment services) to unlicensed remote betting and betting intermediary operators requesting them to cease supplying such services

8 Betting Act 1931 Sections 1 and 7C.

9 Available from the website of the Irish Revenue Commissioners.

to unlicensed operators. Failure to comply with a compliance notice is an offence and can lead to a fine of up to €50,000. In addition, various civil and criminal sanctions may also apply.

II LEGAL AND REGULATORY FRAMEWORK

i Legislation and jurisprudence

There are a number of different, parallel legislative regimes that control and regulate gambling in Ireland:

- a the Betting Acts, which govern betting in Ireland;
- b the Gaming and Lotteries Acts, which govern gaming, lotteries and other similar activities;
- c the National Lottery Act 2013, which governs the Irish National Lottery; and
- d the Totalisator Act 1929, which governs the Totalisator.

These legislative regimes are currently under review by the Irish legislature and reform is expected in 2019 and 2020 (see Section VIII, below).

ii The regulator

There is currently no Irish equivalent to the UK Gambling Commission, although in March 2019, the government approved the establishment of a gambling regulatory authority. According to the Minister of State with special responsibility for gambling regulation, David Stanton TD:

A modern and effectively regulated gambling environment will ensure, to the greatest extent possible, that gambling will be a safe, fair and entertaining activity for the majority of those who choose to take part in it. We must ensure that it will provide enhanced consumer protection for players while limiting to the greatest extent possible the harmful effects on young people and those who may be susceptible to addiction.

The bookmaker, remote bookmaker and remote betting intermediary licences are granted by the Irish Revenue Commissioners, who administer the licensing process and maintain public registers of those who have been granted a licence. As part of the process of obtaining a licence, the applicant (or the relevant officers of the applicant where the applicant is a company) must first obtain certificates of personal fitness. The Department of Justice and Equality is charged with awarding certificates of personal fitness to overseas applicants. Applicants who are based in Ireland may apply for a certificate of personal fitness from a superintendent of the Irish police.

The Irish National Lottery is regulated by the Regulator of the National Lottery, whose primary functions are to ensure that the Irish National Lottery is run with all due propriety, to ensure that participants' interests are protected and to ensure that the long-term sustainability of the Irish National Lottery is safeguarded. Small lotteries (which must be carried out for a charitable purpose) may be carried out under a permit granted by a superintendent of the Irish police or a licence granted by a district court.

The licensing of amusement halls and funfairs may be determined by a local authority or local district court. Certain very limited (and low-stakes) gaming may take place in

these venues with the appropriate licence. The Irish Revenue Commissioners also licenses low-stakes gaming machines. See Section VII, below, for details of some developments in this sphere in the previous 12 months.

The Totalisator is governed by the Totalisator Act 1929, which provides that the Minister for Finance awards the relevant licence to operate the tote.

Spread betting on financial instruments is governed by the Markets in Financial Instruments Directive (2004/39/EC) and regulated by the Central Bank of Ireland.

iii Remote and land-based gambling

The Betting (Amendment) Act 2015 (the 2015 Act) brought remote bookmakers (e.g., internet and mobile betting providers) and remote betting intermediaries (e.g., betting exchanges) within the scope of the existing licensing regime that applied to bricks-and-mortar betting shops in Ireland. The 2015 Act extended the existing 1 per cent turnover on a bookmaker's activities to online and mobile operators and introduced a 15 per cent commission tax on betting exchanges. These rates have since increased to 2 per cent and 25 per cent respectively since 1 January 2019.¹⁰ 'Commission charges' are defined in the Finance Act 2002 (as amended) as 'the amounts that parties in the State to bets made using the facilities of a remote betting intermediary are charged, whether by deduction from winnings or otherwise, for using those facilities'.

Under the 2015 Act, a traditional land-based bookmaker's licence permits a limited amount of remote betting without the need to obtain an additional remote bookmaker's licence. The value of remote betting on a standard bookmaker's licence may not exceed the lower of €200,000 or 10 per cent of that bookmaker's yearly turnover.

The Gaming and Lotteries Acts apply to all forms of gaming, but have not been updated since the introduction of remote gaming. See Section VIII, below, for details of the reform that is anticipated in this area.

iv Land-based gambling

While the Betting Acts envisage the business of bookmaking being carried out in registered bookmaker's premises,¹¹ the Gaming and Lotteries Acts provide for a number of different locations in which forms of gaming can take place (e.g., amusement halls,¹² carnivals,¹³ and circuses¹⁴). Depending on the type of gambling to be performed, there are a range of restrictions. There is no formal limit on the number of gambling premises of a particular type that can be granted.

Casinos are illegal in Ireland if they promote or provide facilities for any kind of gaming that is deemed 'unlawful gaming' for the purposes of the Gaming and Lotteries Acts. This includes gaming in which, by reason of the nature of the game, the chances of all the players, including the banker, are not equal, or gaming in which any portion of the stakes is retained by the promoter or is retained by the banker other than as winnings on the result of the play. Private arrangements are excluded from the scope of the Gaming and Lotteries Acts. This has

10 <https://www.revenue.ie/en/companies-and-charities/excise-and-licences/excise-duty-rates/betting-duty.aspx>.

11 Defined in Section 1 Betting Act 1931 as 'premises for the time being registered in the register of bookmaking offices kept by the Revenue Commissioners under this Act'.

12 Gaming and Lotteries Act 1956 Section 14.

13 Gaming and Lotteries Act 1956 Section 7.

14 Gaming and Lotteries Act 1956 Section 6.

given rise to the operation of private members' clubs as casinos and card clubs, which it may be argued fall outside the prohibitions on gaming contained in the Gaming and Lotteries Acts. Aside from the requirement to become a member, a process that is not standardised, the opening hours, age restrictions and general operation of such clubs are not regulated.

The Totalisator Act 1929 provides for the establishment and regulation of the Totalisator¹⁵ by the Irish Revenue Commissioners. The Irish Horse Racing Industry Act 1994 provided that the Irish Horse Racing Authority could apply for and hold a totalisator licence. This was later transferred to Horse Racing Ireland by the Horse and Greyhound Racing Act 2001 and the licence is currently held by Tote Ireland. As stated in Section I, above, Tote Ireland's current licence is due to expire in 2021. Bord na gCon is licensed to operate a totalisator at greyhound tracks.

v Remote gambling

Remote betting and the provision of remote betting intermediary services are generally permitted in Ireland, meaning that an operator that is licensed by the Irish Revenue Commissioners in Ireland may provide betting services to Irish citizens in Ireland by remote means¹⁶ using equipment which may be located in Ireland or abroad.

As stated in Section I.v, above, online gaming products such as casino, slots and bingo are governed by the Gaming and Lotteries Acts, although that legislative regime has not been updated to take account of online internet gaming. The focus of the Gaming and Lotteries Acts is on gaming carried out in amusement halls, arcades, funfairs, carnivals, travelling circuses and slot machines, and therefore it is unclear how it is to be applied to the type of games offered online. It is common, however, for operators who are licensed in other jurisdictions to offer online products to Irish customers. It is important in such circumstances that the contract between the operator and the Irish customer is not governed by Irish law. Operators should also be aware that the Gaming and Lotteries Acts prohibit the promotion, advertising and the provision of unlawful gaming products so it is important that operators are familiar with these provisions.

vi Ancillary matters

Suppliers of key equipment (e.g., manufacturers of gambling equipment or software suppliers) are not currently required to obtain licences in order to supply to operators. This may be set to change when the Scheme is enacted (see Section VIII, below).

vii Financial payment mechanisms

There are no specific restrictions on payment mechanisms for gambling in Ireland. Again, this may be set to change when the Scheme is enacted (see Section VIII, below).

15 Defined in the Totalisator Act 1929 as 'an apparatus or organisation by means of which an unlimited number of persons can each stake money in respect of a future event on the terms that the amount to be won by the successful stakers is dependent on or to be calculated with reference to the total amount staked by means of the apparatus or organisation in relation to that event but not necessarily on the same contingency, and the said word includes all offices, tickets, recorders, and other things ancillary or incidental to the working of the apparatus or organisation'.

16 Defined in Section 1, Betting (Amendment) Act 2015 as meaning 'in relation to a communication, any electronic means, and includes (a) the internet, (b) telephone and (c) telegraphy (whether or not wireless telegraphy)'.

III THE LICENSING PROCESS

i Applications

The Betting Acts make provision for three types of betting licences:

- a* a bookmaker's licence;
- b* a remote bookmaker's licence; and
- c* a remote betting intermediary's licence.

A licensed bookmaker may accept bets by remote means without a remote bookmaker's licence, provided that the total value of the remote bets accepted is less than €250,000 or 10 per cent of the turnover derived from the operations covered by the bookmaker's licence for the year concerned.¹⁷

Under the 2015 Act, a licence can now be taken out by a body corporate as well as an individual.¹⁸ The application process for the three types of licences essentially involves two stages. The applicant (or in the case of an application by a body corporate, each 'relevant officer'¹⁹ of the body corporate) must first obtain a certificate of personal fitness (COPF). Applications for COPFs from remote operators must be made to the Minister for Justice and Equality, following the placement of an advertisement in two daily, national newspapers.²⁰ Applications for COPFs from terrestrial bookmakers ordinarily resident in the state must be made to a superintendent of the Irish police.²¹ The superintendent or Minister for Justice has up to 56 days to either grant or refuse an application.²²

Once COPFs have been obtained, the operator has a 21-day window within which their licence application form must be submitted to the Irish Revenue Commissioners.²³ The fully completed application form must be accompanied by the COPE, a valid tax clearance certificate and payment of the licence duty.²⁴ A licence will be issued by the Irish Revenue Commissioners where the application meets all requirements and on payment of the appropriate licence duty.²⁵ The licence duty payable on the first application and renewal of a bookmaker's licence is €500. The licence duty payable on the first application for a remote bookmaker's licence and remote betting intermediary's licence is €10,000, and the duty payable on renewal is based on turnover and commission charges.²⁶ The licence may be paid in full at the time of application or renewal or in two equal instalments.²⁷

17 Revenue Commissioners, 'Remote bookmaker's Licence and Remote Betting Intermediary's Licence', www.revenue.ie/en/tax/excise/excise-licensing/remote-bookmakers-licences.html.

18 Revenue Commissioners, 'Bookmaker's Licence', www.revenue.ie/en/tax/excise/excise-licensing/bookmakers-licences-betting.html.

19 The Department of Justice will generally require Certificates of Personal Fitness for at least two Relevant Officers with one of the those Relevant Officers having to come within Section 1(a) Betting (Amendment) Act 2015.

20 Department of Justice and Equality, 'Gambling' www.justice.ie/en/JELR/Pages/WP15000254.

21 *ibid.*

22 Betting Act 1931 Sections 4(6), 5(5) and 5A(5).

23 McCann FitzGerald Briefing 'Betting & Gaming Update. Licence renewal date fast approaching. Are you ready?' (April 2017).

24 Revenue Commissioners, 'Bookmaker's Licence' www.revenue.ie/en/tax/excise/excise-licensing/bookmakers-licences-betting.html.

25 *ibid.*

26 *ibid.* footnote 23.

27 *ibid.* footnote 23.

Application forms must be completed online using the Revenue Online Service (ROS). Not all ROS services are available automatically so it may be necessary to first register for ROS with the Irish Revenue Commissioners. As a practical point for operators, this process of registering for ROS can take a number of weeks.

The standard duration of a licence is two years.²⁸ Bookmakers' licences will expire on 30 November of every second year.²⁹ Remote bookmakers' licences and remote betting intermediaries' licences will expire on 30 June of every second year.³⁰ The requirements and processes that apply to the first licence application also apply to applications for licence renewal.³¹

For retail bookmakers, if the bookmaking business is only being conducted on-course, the holder of the licence must apply for a separate authorisation to accept bets on-course. If the bookmaking is being conducted from a premises, a certificate of registration of premises is required.

There is no licensing regime contained in the Gaming and Lotteries Acts.

ii Sanctions for non-compliance

It is an offence to act as a bookmaker, a remote bookmaker or as a remote betting intermediary without a licence.³² The penalty for acting without a licence is a class A fine (maximum fine of €5,000) on summary conviction or, on conviction on indictment, a maximum fine of €150,000 or imprisonment for up to five years, or both.³³ Where a further offence is committed, conviction on indictment carries a maximum fine of €300,000 or imprisonment for up to five years, or both.³⁴

It is an offence to represent oneself as a bookmaker, a remote bookmaker or as a remote betting intermediary without a licence.³⁵ The penalty for this offence is a class A fine on summary conviction or, on conviction on indictment, a maximum fine of €100,000.³⁶ Where a further offence is committed, conviction on indictment carries a maximum fine of €250,000.³⁷

The 2015 Act allows the Irish Revenue Commissioners to serve a 'compliance notice' on persons who provide unlicensed operators with certain services and facilities, for example, providing internet services for the purpose of carrying on a remote bookmaking operation or advertising a remote bookmaking operation carried on by an unlicensed operator.³⁸ In addition, payment services or advertising could potentially be the subject of a compliance notice. It is an offence to fail to comply with a compliance notice. The penalty for failure to

28 *ibid*, footnote 23.

29 *ibid*, footnote 23.

30 Irish Revenue Commissioners, 'Remote bookmaker's Licence and Remote Betting Intermediary's Licence' www.revenue.ie/en/tax/excise/excise-licensing/remote-bookmakers-licences.html.

31 *ibid*.

32 Betting Act 1931 Section 2(1).

33 Betting Act 1931 Section 2(6).

34 Betting Act 1931 Section 2(7).

35 Betting Act 1931 Section 2A(1).

36 Betting Act 1931 Section 2A(2).

37 Betting Act 1931 Section 2A(3).

38 Betting Act 1931 Section 32B(1).

comply is, on summary conviction, a class A fine or imprisonment for up to six months or both, or, on conviction on indictment, a maximum fine of €50,000 or imprisonment for up to two years or both.³⁹

It is an offence to make a bet or engage in a betting transaction with a person under the age of 18 years.⁴⁰ The offence carries a penalty of a class A fine or imprisonment for up to six months on summary conviction, or, on conviction on indictment, a maximum fine of €50,000 or imprisonment for up to two years, or both.⁴¹

There is also a range of sanctions for non-compliance with the Gaming and Lotteries Acts. In practice, the most potentially serious of these sanctions is that any gaming instruments used in the commission of an offence under the Gaming and Lotteries Acts can be the subject of a forfeiture order. It has been publicly acknowledged by the Department of Justice that 'there are serious problems with the enforcement of laws governing gaming'.⁴²

IV WRONGDOING

The Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Act 2018 commenced on 26 November 2018, transposing the Fourth Anti-Money Laundering Directive (AMLD4) into Irish law with the aim of further strengthening the EU's defences against money laundering and terrorist financing, and ensuring the soundness, integrity and stability, and confidence in the financial system as a whole. It seeks to strengthen EU rules and to ensure their consistency with the global standards laid down in the international recommendations adopted by the Financial Action Task Force. The Directive gives effect to Regulations that ensure gambling service providers are brought within the scope of Anti-Money Laundering legislation.

The Fifth Anti-Money Laundering Directive (AMLD5) has been adopted and entered into force on 9 July 2018. Member states will have to implement these new rules into their national legislation by 10 January 2020. These rules were upgraded as EU leaders called for a collective European effort following the wave of terrorist attacks. The Commission urges Member States to stick to their commitment to introduce these tightened measures as early as possible. The proposal was presented by the Commission in July 2016 in the wake of terrorist attacks and the revelations of the Panama Papers scandal, and is part of the Commission's Action Plan of February 2016 to strengthen the fight against terrorist financing. It sets out a series of measures to better counter the financing of terrorism and to ensure increased transparency of financial transactions. The government has approved the drafting of the Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Bill and a general scheme was published on 3 January 2019. This Bill will transpose many of the provisions of AMLD5.

The stated aim of AMLD5 is 'to extend the scope of the Fourth Directive so as to include providers of gambling services engaged in exchange services between virtual currencies and fiat currencies as well as custodian wallet providers'. In essence, the objective is to modernise the anti-money laundering and terrorist-financing provisions in AMLD4 to prevent such criminal activity in light of the advent of new, intangible forms of currency,

39 Betting Act 1931 Section 32B(10).

40 Betting Act 1931 Section 23(1).

41 Betting Act 1931 Section 23(3).

42 Report of the Interdepartmental Group 'Review of Gaming and Lotteries Acts 1956-86' at p. 2.

for example, bitcoin, which could be exploited for fraudulent gains in any financial system, including gambling entities. It appears that Section 16 of AMLD5 will amend Article 47 of the AMLD4 to require Member States to take steps to ensure that gambling service providers who offer virtual currencies as means of payment are regulated.

The Sixth Anti-Money Laundering Directive (AMLD6) was published in the Official Journal of the European Union on 12 November 2018 and complements the existing directives on anti-money laundering. AMLD6 will need to be transposed by all Member States by 3 December 2020.

V TAXATION

Bookmakers in Ireland are subject to betting duty at 2 per cent of turnover. Remote bookmakers must also pay this duty on bets entered into with persons resident in Ireland.

Remote betting intermediaries are subject to a betting intermediary duty that is currently 25 per cent of their commission charges. 'Commission charges' are defined in the Finance Act 2002 (as amended) as 'the amount that parties in the State to bets made using the facilities of a remote betting intermediary are charged, whether by deduction from winnings or otherwise, for using those facilities'.

Unlike most other European jurisdictions, gaming services are not specifically exempted from VAT in Ireland. As a result, online providers who are licensed overseas but who are providing e-gaming services to Irish customers should be registered and charging Irish VAT at 23 per cent on play from Irish customers. Generally speaking, the amount on which VAT is charged is the consideration actually received by the operator from Irish customers. For non-pooled gaming (e.g., slots, casino), this will typically be the net revenue (i.e., after free bets or plays) that the operator receives. For pooled gaming (e.g., poker), the consideration that will be subject to VAT is the rate that the e-gaming operator receives, which is applicable to Irish customers.

Casinos that operate in Ireland as private members' clubs must all register and charge VAT on customers' winnings.

VI ADVERTISING AND MARKETING

For retail bookmakers, Section 20(1) of the 1931 Act prohibits a retail bookmaker from setting up or maintaining in or outside his or her shop:

any attraction (other than the mere carrying on of his business of bookmaking) which causes or encourages or is likely to cause or encourage persons to congregate in or outside such premises.

Section 20(3) contains a prohibition on a bookmaker from:

proclaim[ing] or announc[ing] or permitt[ing] any other person to proclaim or announce in such premises to the persons there present the terms or odds on or at which he is willing to take bets in relation to any particular race, match, or other contest, or in respect of any competitor in any such contest.

Section 20(4) prohibits a retail bookmaker from exhibiting (or permitting to be exhibited) in or outside his or her shop (or that is visible from the street):

any lists or statements of the terms or odds on or at which he is willing to take bets in relation to any particular race, match, or other contest, or in respect of any competitor in any such contest, or lists or statements of the competitors entered for or withdrawn from or taking or likely to take part in any such contest, or statements of facts, news, or forecasts in respect of any such contest, or any other incitement or inducement to bet.

The Broadcasting Commission of Ireland is an independent statutory organisation responsible for some of the key aspects of television and radio services in Ireland. Its General Commercial Communications Code (the Code) addresses standards with regard to all forms of commercial communication, including advertising, sponsorship and teleshopping. Section 8.8 of the Code covers gambling and provides that commercial communications that seek to promote services to those who want to bet are acceptable.

Section 8.8 of the Code also provides that such communications may contain the address of the service provider and factual descriptions of the services available but may not contain anything that could be deemed to be an ‘encouragement to bet’. Information detailing special offers, discounts, inducements to visit any betting establishment (including online), references to betting odds available or any promotional offer intended to encourage the use of services of this nature are not permitted.

A revised version of the Code that governs commercial communications such as advertising, sponsorship and product placement on Irish licensed television and radio stations, which took effect from 1 June 2017, includes enhanced provisions, such as prohibitions on advertising of remote bookmaking operations without a remote bookmaker’s licence, and certain portrayals of gambling (e.g., children gambling or that gambling can be a solution to personal or professional problems, or financial concerns).

In addition, recent decisions of the Advertising Standards Authority of Ireland (ASAI) provide useful guidance for the betting and gaming industry as to where the lines between permitted and non-permitted advertising of promotions are drawn. In particular, care should be taken if using phrases such as ‘risk-free bet’ or ‘money-back special’. In addition, advertised headline offers must be consistent with any restrictions or clarifications in the applicable terms and conditions.

i Risk-free bet

In 2016, the ASAI considered an email sent by a bookmaker advertising a risk-free bet⁴³ for customers who downloaded a new app. A recipient of the email complained to the ASAI that he did not think the offer was risk-free. It required punters to place a bet for £5; if they lost this bet they could then receive another free £5 bet. The complainant argued that the label ‘risk-free bet’ implied that his initial £5 would be returned if he was unsuccessful.

In its response to the ASAI denying the complaint, the advertiser claimed that risk-free bet was a term frequently used in the sector and commonly understood to have the meaning given to it (i.e., that a punter who lost would receive another bet, rather than be refunded their stake). The advertiser highlighted that the offer was described in three steps in the body of the email and the details were not hidden in the terms and conditions. It also stated that as the customer had chosen to receive its marketing emails, he would be familiar with the language used in the gaming industry.

43 ASAI Reference: 26230, www.asai.ie/complaint/leisure-betting-4.

Upholding the complaint, the ASAI determined that ‘risk-free’ could be understood by some consumers to mean that if they lost their initial bet, their stake would be refunded to them. While the ASAI acknowledged that the body of the email explained the terms of the offer clearly, it still found the advertisement to be in breach of three Sections of the ASAI Code relating to honesty, misleading advertising and misleading promotions.

ii Consistency with terms and conditions

In other recent decisions involving the gambling sector, the ASAI has emphasised the need for headlines or text in promotional offers to be consistent with the terms and conditions. For example, in a decision delivered in January 2016,⁴⁴ the ASAI held that an advertisement that contained headline text that was subject to an important clarification contained in a footnote was not compliant as there was no asterisk in the headline to draw attention to the footnote. In a previous decision given in 2015⁴⁵ advertisers were reminded that that it was not compliant to make a headline offer if it was subsequently meaningfully restricted by the terms and conditions.

The ASAI is a self-regulatory body set up by the advertising industry in Ireland to promote standards in commercial advertising in compliance with a Code of Standards for Advertising. While the ASAI Code does not have a legislative basis, commercial marketing communications found to be in contravention of the Code by the ASAI Complaints Committee must be amended or withdrawn by organisations who agree to abide by the Code. In addition, decisions of the ASAI may be taken into account when applicable advertising or consumer protection legislation is being considered. For example, an advertisement that breaches the ASAI Code could, in certain circumstances, also be deemed to constitute a ‘misleading commercial practice’ for the purpose of the Consumer Protection Act 2007 and give rise to civil and criminal liability.

VII THE YEAR IN REVIEW

Perhaps the most reported development in 2018 was the decision by the government to increase the rate of betting tax from 1 per cent to 2 per cent and the betting duty on the commission earned by betting intermediaries or exchanges from 15 per cent to 25 per cent with effect from 1 January 2019. Broadly speaking, the increase met with strong resistance from the industry, with the impact on smaller operators expected to be particularly negative in the years ahead.

It was suggested at the time by those in support of this increase that any additional revenue generated by this increase could be directed towards gambling addiction services, or to eliminate the shortfall between the tax take, and the €80 million per year that the exchequer contributes to the Horse and Greyhound Fund.

Another significant development in 2018 was the decision by the Irish Revenue Commissioners to start seizing the gaming machines of a small number of operators in certain circumstances. In brief summary, as reported in the media, it is argued by the Revenue Commissioners that these operators are ignoring a Dublin City Council directive banning

44 ASAI Reference: 24857, www.asai.ie/complaint/leisure-betting-3.

45 ASAI Reference: 22538, www.asai.ie/complaint/leisure-betting-2.

the issuance of gaming licences in Dublin City, which resulted in the operators applying for and being granted amusement licences instead. The legality of these seizures is being challenged by the operators in question.

Another significant development in March 2019 was the approval by the government of the establishment of a gambling regulatory authority and the publication of the 2019 Amendment Bill, which provides for the long overdue modernisation of the Gaming and Lotteries Acts. It is expected that the 2019 Amendment Bill will, among other matters, bring clarity to the permit and licensing approach to small scale, local gaming and lottery activity, update certain stake and prize limits and standardise the minimum gambling age at 18. Importantly, the 2019 Amendment Bill proposes to increase the stake and prize limits to €10 and €750 respectively (from 3c and 50c) for those gaming machines permitted under the conditions of Part III of the Gaming and Lotteries Act. These limits have not been increased since 1956.

According to Minister Stanton:

The amendments to the 1956 Act published today will help the promoters of local gaming and lottery activity, primarily sporting clubs, by bringing much needed clarity to the application process for permits and licences. This is an interim reform measure pending development of comprehensive reform in this area. The issue of underage gambling is one that I am particularly anxious to address. I propose to standardise the age limit for participating in all activities under the Gaming and Lotteries Act 1956 at 18 years of age. In addition, the Totalisator Act 1929 will be amended to provide for an age limit of 18 years for betting with the Tote.

VIII OUTLOOK

The Minister for Justice announced plans in 2011 for new legislation on gambling in Ireland. In presenting his plans, the Minister noted that ‘the present laws are not adequate to deal even with aspects of gambling which they were intended to cover’.⁴⁶

The heads of the Scheme were published on 15 July 2013.⁴⁷ The intent of the Scheme was that it would, if enacted, provide a comprehensive overhaul of Ireland’s outdated gambling laws and would result in most forms of gambling being regulated by a single piece of legislation.

Since the initial publication of the Scheme in 2013, limited progress has been made. However, a number of recent high-profile cases involving prominent sportspeople and gambling addiction, coupled with increased public concern about children under 18 engaged in gambling activities, has led to an increased political desire to implement legislation to give effect to the scheme. If legislation is enacted to give effect to the proposals outlined in the Scheme, it will result in a fundamental change in gambling law and regulation in Ireland.

On 10 January 2018, it was widely reported in the media that the government would scrap the Scheme in favour of drafting and publishing an updated Scheme, on the basis that

46 Department of Justice And Equality, ‘Minister Shatter announces the preparation of a new Bill on Gambling’ (21 September 2011), www.justice.ie/en/JELR/Pages/PR11000178.

47 Department of Justice And Equality, Gambling Control Bill 2013 – General Scheme (July 2013), www.justice.ie/en/JELR/Pages/PB13000296.

the original Scheme is, on reflection, outdated and no longer fit for purpose. It is anticipated that the revised Scheme will now tackle new developments in the industry, such as social media advertising, crypto-currencies and secondary lottery providers.

It is anticipated that the revised Scheme will be published in 2019 or early 2020.

Outlined below are a number of the anticipated key features of the revised Scheme.

i Independent regulatory authority

In a significant departure from what was originally proposed, it is now anticipated that an independent regulatory authority will be established to regulate the gambling industry in Ireland. In contrast, it was previously envisaged that the Department of Justice would provide regulatory oversight of this area through the creation of the Office of Gambling Control, Ireland (OGCI).

Media reports suggest that the duties of this independent authority will include overseeing advertising, sports sponsorship, access for those under 18, a social fund for access to treatment for addiction, and a research function. It is, as of yet, unclear whether this authority will have responsibility for issuing licensing, ensuring compliance with the Scheme, how the Scheme will be enforced once enacted or how the authority will be funded. It is reasonable to suggest that the new body will assume most of the functions that were expected to be carried out by the OGCI and in this event, the new independent regulator will probably grant licences to promoters who will incur a licensing fee that will go towards funding the independent regulator. Similarly, just as the OGCI was to be the ultimate enforcer of gambling laws in this jurisdiction, it is likely that the independent regulator will also be equipped with similar powers to fulfil this role (e.g., the power to order ISP blocking measures to prevent, disrupt or obstruct access to unlicensed remote services).

In March 2019, the government approved the establishment of a gambling regulatory authority.

On 21 December 2019, the Department of Justice and Equality announced that McCann FitzGerald, in cooperation with the European Commission, would advise the Irish state in its efforts to establish a modern regulatory environment and authority for all licenced gambling activities. At the time of writing, this project is ongoing.

ii Online gambling and social media advertising

Media reports also suggest that online gambling and social media advertising will be considered in the revised Scheme. A government spokesperson has been quoted as saying that the scheme should be updated in order to 'protect consumers and vulnerable people'. It could be argued that the inclusion of advertising restrictions in primary legislation, as suggested by us at the time of the publication of the original scheme, could render them inflexible, as it would potentially make these rules more difficult to amend as necessary.

iii Licensing system

It is anticipated that the revised Scheme will update the licensing system in Ireland. Following publication of the original scheme, several submissions were made to the Department of Justice and Equality in relation to the complex licensing system envisaged by the original Scheme. The majority of these submissions sought a more streamlined licensing system. Of particular interest will be whether the revised Scheme will reduce the number of licences

proposed in the original Scheme (43 different licences in total), with a view to minimising potential administrative backlog and simplifying the system for promoters who may find it unduly difficult to determine what licence to apply for.

iv Additional issues

Other issues that are reported to be included in the revised Scheme are the regulation of gaming machines, the regulation of casinos, restrictions on financial payment mechanisms and the protection of children against gambling. Legislation for land-based casinos and casino games was provided for in the original Scheme, in addition to provisions to allow for gaming in betting shops and enhanced player protection measures. No specific mention has been made of these provisions in relation to the revised Scheme.

v Timing

Having received approval at government level, the government will now commence discussions with stakeholders in the gambling industry with a view to gauging key issues to be tackled in the new and improved General Scheme.

In addition to the decision to publish a new and updated Scheme, some initial steps were taken in 2017 to modernise the Gaming and Lotteries Acts. The General Scheme of the Courts and Civil Law (Miscellaneous Provisions) Bill 2017 was published on 2 August 2017 and, while it has not yet been enacted and accordingly is not yet legally binding in Ireland, it is an indication that the Gaming and Lotteries Acts will be modernised in 2019. Similarly, the 2019 Amendment Bill was published in March 2019 and will, when enacted, among other matters, bring clarity to the permit and licensing approach to small scale, local gaming and lottery activity, update certain stake and prize limits and standardise the minimum gambling age at 18.

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Alan Heuston is a partner in McCann FitzGerald's tax group, about which Chambers Europe recently noted, 'They are accessible, technically strong and commercial with their solutions.' Alan has extensive experience in advising clients on the tax aspects of mergers and acquisitions, reorganisations, restructurings, migrations, capital markets, financial products, banking, and a wide range of other international and domestic tax matters.

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