

THE GAMBLING LAW  
REVIEW

SEVENTH EDITION

Editor  
Carl Rohsler

THE LAWREVIEWS

THE  
GAMBLING LAW  
REVIEW

SEVENTH EDITION

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# PREFACE

*Luck always seems to be against the man who depends upon it.*

Ukrainian proverb

A few days ago I took the Tube from my home in London to visit the ExCel centre in Canary Wharf to go to the International Casino Exhibition. It seemed like a long time since I had been to the ICE. In truth, the tone of the conference was somewhat subdued compared with the razzle-dazzle of previous years. Some of the larger land-based games providers had stayed away – an indication perhaps that the casino industry is still in its recovery phase and not yet ready for new investment. But there were few masks to be seen on the tube train, or among the delegates. People were shaking hands again. Although our economy has not returned to normal, and the bill is yet to be paid, it is important also to remember how far we have come: the ExCel centre had been a temporary Nightingale hospital from April 2020 to April 2021, with a capacity of 4,000 beds for covid patients (a precaution that proved fortunately unnecessary). There is no doubting times have changed very quickly – both for the better and the worse: in the Preface to the last edition of this work, I commented that Ukraine was one of the few countries that had undergone significant changes in its gambling law during the course of the previous 12 months. That seems now to be a poignantly irrelevant observation. But however terrible the situation in Ukraine has become, my task is to look elsewhere, and introduce a work on the past year in gambling law, and the predictions for the next.

Last April, I tried to identify some of the key themes that might emerge in a post-pandemic world in order to assess what our ‘new normal’ for leisure and entertainment was going to look like. At that time, it appeared that the pandemic was already coming to its close and that we might very soon enjoy an easing of restrictions. I did not realise that we were only about half way through the process with another full year of lockdowns and restrictions still to come (to say nothing of a further programme of booster vaccines). So it is perhaps only now, in April 2022, that we are able to start perceiving how a world that has to shrug at the continued presence of covid-19 might look.

One of the first points that I raised was that, in the years of the pandemic, Western society had refocused attention on domestic homes, and had made an important social transition to home being a place of work as well as normal domestic life. I venture to say that when seen in terms of an impact on the overall population, that change has probably been the single largest social change so far this century. I am certainly still working mostly from my home and, like millions of others, enjoying a different perspective on what it is to be at work, including differing pressures, changing patterns of social interaction and the extra time that used to be spent on a (usually unpleasant) commute. The average commute to work across the UK is approximately 40 minutes each way (with London having a far longer average

74 minutes each way), and so reducing or eliminating travel to the workplace has probably increased the time available for work or leisure by as much 5 to 10 per cent across large parts of the services economy, as well as reducing that aspect of the cost of living.

Since the winding back of restrictions at the beginning of 2022, we have seen a sharp increase in workplace attendance, but a very large number of businesses have now adopted a 'hybrid model', and employees are increasingly asking for that to become a permanent feature of working patterns. Consequently, from Tuesday to Thursday, life resembles its pre-pandemic rhythm. But Mondays and Fridays have a different feel. Since January, those who operate restaurants and bars have seen a dramatic increase in the normal patterns of attendance, but there have been significant changes that require adaptation. I do not think that I predicted that the enthusiasm for home-working would stratify society by age. Those in their 20s and early 30s heavily favour a full-time return to work, while those over the age of 55 tend to want to work from home permanently. That reflects not only a desire for training (and perhaps also the lack of space available for work in smaller homes) but also more deeply that work is actually a social space – with many singletons looking for friendship and entertainment as much as for professional experience.

I also predicted that the substantial shift from urban living to a disaggregated workforce would be permanent. I think now that this was a hasty prediction and, in any event, it is far too early to tell whether this will happen. The first point is that although there are many renters or flexible workers who can make the move from cities to the countryside (or vice versa), there are plenty of others who are tied by more long-term commitments such as children's schooling to stay put. The other factor is that cities are places not just for work, but concentrations for leisure activities – and the public has shown a very strong desire to get back to enjoying itself in theatres, concert halls, bars and casinos. So while many have reassessed that a life nearer to the countryside is more healthy and cost-effective, any exodus has been nuanced. It seems likely that we will only see the true level of change in three to five years. Let us not forget also that working patterns are not necessarily confined by national boundaries. Several governments have been quick to recognise the advantages of attracting generally affluent desk-based workers to populate sunnier and cheaper living destinations – with countries such as Italy, Spain and Portugal all developing 'digital nomad' visa schemes to allow workers to work for up to a year abroad without becoming liable to the (full) tax implications of residence abroad.

All these complex changes leave a significant question mark over the planning uses of parts of our urban centres. Although there has been a significant return to work, and offices and shops are returning to their pre-pandemic levels of use, there are clearly some long-term shifts in the way that urban space is needed, and that process will continue as retail and office space is reused either for residential projects or entertainment space. Restaurant and entertainment attendance has rebounded – though still not to pre-pandemic levels, and there are a lot of changes to the labour market in those industries that will take time to be solved.

Meanwhile, the rise of the home as a centre of personal entertainment continues unabated. The 5G network and fast broadband continues to level the playing field across the developed world as consumers demand the ability for the whole family to stream entertainment and work from home at the same time. In the UK, a recent survey (namely Bazaarvoice 2021), 55 per cent of UK consumers said that they would prefer to shop digitally rather than in store. At the same time, the same survey gives insights into how our shopping methodology has changed, with more than 75 per cent of US online shoppers saying that they 'always' read reviews before making a purchase. These new 'networks of trust', whether

expressed by influencers, reviewers or affiliate schemes have become some of the most important drivers of customer behaviour. We have seen a rapidly growing sophistication in controlling the authenticity of reviews, social media messages and the news itself. Another change is the move from social media from being a place merely for messaging to a direct place for purchase – with one in three of those surveyed having purchased an item through social media for the first time in the last 12 months. To be clear, these were technological and social trends that were not specifically linked to the pandemic, but they have been accelerated and then cemented in our habits by the necessity of lockdown and the subsequent longevity of our confinement. And, let us not forget, they are also vastly more convenient for us, while allowing retailers and service providers to understand their customer base at a level of detail impossible a decade ago.

What does this mean for land-based gambling? As with shopping generally, we have seen certain types of gambling product transfer substantially from a land-based to an online model. Lotteries and sports betting are both areas of focus, since (apart from track-side betting) the convenience of online betting and lottery tickets is not counterbalanced by any real ‘thrill’ from physical attendance at the licensed premises. However, the more socially focused forms of gambling – casino and bingo to give two examples, are predicted to rebound strongly, though in the case of some casinos, we have yet to see the full return of tourism to pre-pandemic levels.

Speaking of tourism: 2022 seems likely to be the first time that many of us get to have a holiday in a long while – and we can all see that the skies are criss-crossed with vapour trails in a way that we have not seen since 2019. That will provide a very important boost for many countries that rely on summer holidays as an important part of their income. But the future looks somewhat more challenging for a large-scale return to business travel. There will of course be a large increase. But it is harder to justify a marketing budget with business-class flights having managed two years of videoconferences.

Last year, I tried to predict the way that the economic shock of the pandemic would impact on our leisure spending. I think I was probably wrong (twice!). In the first place, the rebound of the world’s economies has been somewhat stronger than many imagined possible – but the combination of money to spend and scarce resources has led to inflationary pressures that have been much worse than predicted – and have been further compounded by uncertainty over energy supply. If there is any good to come out of the current war in Ukraine, it may be that the world will have an even more acute incentive to turn away from excessive reliance on resources that are controlled by a single axis of political power.

What does this mean for leisure spend in the Western world in 2022? It will divide society in unfortunate ways. Many who experienced a long period of economic uncertainty, will have those stresses compounded by a period of sharp price rises. Others, as usual, will have had money to invest in rising markets, and will be feeling as though they have enjoyed ‘a good lockdown’.

Turning to this year’s edition, developments in gambling law and practice have been somewhat muted. As a case in point, the UK’s own government review of the Gambling Act has been postponed twice. The main exception to this slower tempo has been the US market, which continues to grow and expand legally and economically, and upon which much attention has naturally been focused.

I wish to thank my contributors for their usual careful and detailed analysis of the gambling laws of their individual jurisdictions. I hope that next year’s guide will cover still

more. Let us hope that next year we can each report that some of the troubles that have plagued our society in recent times will be closer to resolution, and we can turn our attention more squarely to the regulation of entertainment.

**Carl Rohsler**

Memery Crystal

London

April 2022

# IRELAND

*Alan Heuston*

## 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*,<sup>2</sup> 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 1956–2019 (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’.<sup>3</sup> A stake is

---

1 Alan Heuston is a partner 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’.<sup>4</sup>

The Gaming and Lotteries (Amendment) Act 2019 came into force on 1 December 2020 and introduced a suite of changes to the laws in respect of gaming. See Section III for further detail.

### ***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’.<sup>5</sup>

The Gaming and Lotteries (Amendment) Act 2019 came into force on 1 December 2020 and introduced a suite of changes to the laws in respect of lotteries. See Section III for further detail.

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 Totalisator<sup>6</sup> 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. 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.

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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’.

### ***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 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 their retail or remote bookmaker’s licence. There is currently no prohibition on betting on the result of the Irish National Lottery.

The National Lottery Amendment Bill 2021<sup>7</sup> is currently before the Irish government for consideration and debate. The bill, if enacted, will make it an offence for bookmakers and betting intermediaries to take bets or facilitate betting on the outcome of a draw run by 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.<sup>8</sup> 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 a gaming licence or permit is obtained.

Gaming permits are available from a Garda superintendent for on-premises gaming where the maximum stake is €10 and no player can win more than €3,000 in a game. Gaming licences are available from the Revenue Commissioners for gaming machines and all other gaming where the maximum stake is €5 and no player can win more than €500 in a game, provided that a certificate is obtained in the district court in the first instance. 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.

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7 The Houses of the Oireachtas ‘National Lottery (Amendment) Bill 2021’, <https://www.oireachtas.ie/en/bills/bill/2021/57/>.

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

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 2013 Bill), 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 were plans to scrap the 2013 Bill and prepare and publish a new, updated Scheme, on the basis that the 2013 Bill is now considered outdated and no longer fit for purpose. The long-awaited General Scheme of the Gambling Regulation Bill was published on 21 October 2021 (the 2021 Scheme) by James Browne TD Minister of State at the Department of Justice and Equality with responsibility for Law Reform.<sup>9</sup> Minister Browne stated that, 'The publication of the General Scheme is an important milestone towards the effective regulation of gambling in Ireland under the new, independent statutory body – the Gambling Regulatory Authority of Ireland. The 2021 Scheme sets out the framework and legislative basis for how we will do this'. The 2021 Scheme, once enacted, will modernise the current outdated legislative framework in which betting and gaming providers operate. See Sections II and VII for further detail.

### **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).<sup>10</sup> It is clear from the list of operators who have obtained the necessary licences<sup>11</sup> 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

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9 Department of Justice and Law Reform, General Scheme of the Gambling Regulation Bill 2021, <https://www.justice.ie/en/JELR/General-Scheme-of-the-Gambling-Regulation-Bill.pdf/Files/General-Scheme-of-the-Gambling-Regulation-Bill.pdf>.

10 Betting Act 1931 Sections 1 and 7C.

11 Available from the website of the Irish Revenue Commissioners.



internet gaming. The focus of the Gaming and Lotteries Acts is primarily 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 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 2022 and 2023 (see Section VII).

### **ii The regulator**

There is currently no Irish equivalent to the UK Gambling Commission. In March 2019, the government approved the establishment of a gambling regulatory authority. The 2021 Scheme has been approved by the government for priority drafting and publication, and the drafting of the bill is now underway. The bill will set out the framework and legislative basis for the establishment of a new independent, statutory body (the Gambling Regulatory Authority) to implement a robust regulatory and licensing regime for the gambling sector. It is anticipated that the Gambling Regulatory Authority will be operational by 2023. See Section VII for further detail.

Currently, the bookmaker, remote bookmaker and remote betting intermediary licences that are granted 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.

Gaming permits and licences may be obtained from a Garda superintendent or the Irish Revenue Commissioners. Lottery permits and licences may be obtained from a Garda superintendent or the district court.

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.<sup>12</sup> '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. See Section III for details of the reform that recently took place in this respect.

### **iv Land-based gambling**

The Betting Acts envisage the business of bookmaking being carried out in registered bookmaker's premises.<sup>13</sup>

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. Private

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12 [www.revenue.ie/en/companies-and-charities/excise-and-licences/excise-duty-rates/betting-duty.aspx](http://www.revenue.ie/en/companies-and-charities/excise-and-licences/excise-duty-rates/betting-duty.aspx).

13 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'.

arrangements are excluded from the scope of the Gaming and Lotteries Acts. This has 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 Totalisator<sup>14</sup> 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. 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 means<sup>15</sup> using equipment which may be located in Ireland or abroad.

As stated in Section IV, 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. 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.

#### **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 2021 Scheme is enacted (see Section VII).

#### **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 2021 Scheme is enacted (see Section VII).

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14 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'.

15 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 Application and renewal

##### *Betting*

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.<sup>16</sup>

Under the 2015 Act, a licence can now be taken out by a body corporate as well as an individual.<sup>17</sup> 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'<sup>18</sup> 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.<sup>19</sup> Applications for COPFs from terrestrial bookmakers ordinarily resident in the state must be made to a superintendent of the Irish police.<sup>20</sup> The superintendent or Minister for Justice has up to 56 days to either grant or refuse an application.<sup>21</sup>

Once COPFs have been obtained, the operator has a 21-day window within which its licence application form must be submitted to the Irish Revenue Commissioners. The fully completed application form must be accompanied by the COPF, a valid tax clearance certificate and payment of the licence duty.<sup>22</sup> A licence will be issued by the Irish Revenue Commissioners where the application meets all requirements and on payment of the appropriate licence duty.<sup>23</sup> 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.<sup>24</sup> The licence may be paid in full at the time of application or renewal or in two equal instalments.<sup>25</sup>

16 Revenue Commissioners, 'Remote bookmaker's Licence and Remote Betting Intermediary's Licence', [www.revenue.ie/en/tax/excise/excise-licensing/remote-bookmakers-licences.html](http://www.revenue.ie/en/tax/excise/excise-licensing/remote-bookmakers-licences.html).

17 Revenue Commissioners, 'Bookmaker's Licence', [www.revenue.ie/en/tax/excise/excise-licensing/bookmakers-licences-betting.html](http://www.revenue.ie/en/tax/excise/excise-licensing/bookmakers-licences-betting.html).

18 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.

19 Department of Justice and Equality, 'Gambling' [www.justice.ie/en/JELR/Pages/WP15000254](http://www.justice.ie/en/JELR/Pages/WP15000254).

20 *ibid.*

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

22 Revenue Commissioners, 'Bookmaker's Licence' [www.revenue.ie/en/tax/excise/excise-licensing/bookmakers-licences-betting.html](http://www.revenue.ie/en/tax/excise/excise-licensing/bookmakers-licences-betting.html).

23 *ibid.*

24 *ibid.* footnote 19.

25 *ibid.* footnote 19.

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 a fixed period of two years.<sup>26</sup> Bookmakers' licences will expire on 30 November of every second year.<sup>27</sup> The current period is from 1 December 2021 to 30 November 2023. Remote bookmakers' licences and remote betting intermediaries' licences will expire on 30 June of every second year.<sup>28</sup> The current period is from 1 July 2021 to 30 June 2023. The requirements and processes that apply to the first licence application also apply to applications for licence renewal.<sup>29</sup>

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.

### ***Gaming and lotteries***

Since the commencement of the Gaming and Lotteries (Amendment) Act 2019, the Gaming and Lotteries Acts now set out a licensing regime for gaming and lotteries.

Gaming permits are obtained by making an application to a Garda superintendent. The maximum stake is €10 and the maximum prize a player can win in a game is €3,000. The Garda superintendent must consider a number of factors in deciding whether to issue a gaming permit. A gaming permit will not issue where the chances of all the players, including the banker, are not equal. This effectively excludes all forms of a traditional casino from the possibility of obtaining a gaming permit. For gaming machines, and all other gaming where the maximum stake is €5 and no player can win more than €500 in a game, a gaming licence is required from the Revenue Commissioners.

A number of new licensing pathways for lotteries have been introduced by the Gaming and Lotteries (Amendment) Act 2019. Provided that certain conditions are met, certain lotteries that are held for charitable or philanthropic purposes do not require any form of permit or licence. In such instances, the total value of the prizes must be no more than €1,000, the price of each ticket must be no more than €5, the maximum number of tickets sold must be no more than 1,500, the lottery must be conducted for the benefit of a charitable or philanthropic purpose and the promoter of the lottery must derive no personal profit from the lottery and must not have conducted such a lottery during the preceding three months.

Provided that certain conditions are met, certain lotteries that are held in conjunction with the promotion of a particular product do not require any form of permit or licence. The conditions that must be satisfied are that the total value of the prizes must be no more than €2,500, and there must be no charge for taking part in the lottery other than the purchase of the product concerned (if this is required) and there is no additional charge for the redemption of a prize. Promoters of these competitions should note that the prohibition

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26 *ibid.*, footnote 19.

27 *ibid.*, footnote 19.

28 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](http://www.revenue.ie/en/tax/excise/excise-licensing/remote-bookmakers-licences.html).

29 *ibid.*

on additional charges for the redemption of a prize may prohibit requiring partakers to post slips in order to be included in the draw. The use of online codes may be a viable option in these circumstances.

Where the total value of the prizes is not more than €5,000, an application for a lottery permit must be made to a Garda superintendent for the district in which the applicant ordinarily resides, or if a company, its principal office or place of business. At least 60 days' notice must be provided in advance of the first day on which the lottery will be promoted. The conditions attaching to such a permit are that the value of each prize must be stated on every ticket or coupon or, where the lottery is conducted in a premises, this information must be prominently displayed at the normal means of access to the premises proposed to be used, the price of each ticket must be no more than €10, the total value of the prizes must be no more than €5,000 or where more than one lottery is held in any week the total value must be no more than €5,000, and no more than 5 per cent of the total proceeds can be retained by the holder of a lottery permit when the lottery is held for the benefit of a charitable organisation.

Where the total value of the prizes is not more than €30,000, the application for a lottery licence must be made to a judge of the district court assigned to the district in which it is proposed to promote the lotteries at least 60 days before the first day on which it is intended to promote a lottery to which the application relates. The conditions attaching to a lottery licence are that: (1) the holder of the licence must derive no personal profit from the lottery; (2) the value of each prize and the name of the intended beneficiary of the lottery must be stated on every ticket or coupon or, where the lottery is conducted in a premises, this information must be prominently displayed at the normal means of access to the premises proposed to be used; (3) the total value of the prizes, if more than one lottery is held in any week, must be not more than €30,000, and if one lottery is held in any year, must be not more than €360,000; (4) not more than 25 per cent of the total proceeds can be retained by the holder of the licence and utilised for the expenses of promotion, including commission, and any free entry for the lottery must be deemed to be a payment of commission to the extent of its value; (5) not more than 75 per cent of the total proceeds can be allocated to prizes and not less than 25 per cent can be allocated to a charitable or philanthropic purpose; (6) and the allocation of the proceeds referred to above must be made within one month from the date of the holding of the lottery.

## **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.<sup>30</sup> 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.<sup>31</sup> 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.<sup>32</sup>

It is an offence to represent oneself as a bookmaker, a remote bookmaker or as a remote betting intermediary without a licence.<sup>33</sup> The penalty for this offence is a class A fine on

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30 Betting Act 1931 Section 2(1).

31 Betting Act 1931 Section 2(6).

32 Betting Act 1931 Section 2(7).

33 Betting Act 1931 Section 2A(1).

summary conviction or, on conviction on indictment, a maximum fine of €100,000.<sup>34</sup> Where a further offence is committed, conviction on indictment carries a maximum fine of €250,000.<sup>35</sup>

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.<sup>36</sup> 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 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.<sup>37</sup>

It is an offence to make a bet or engage in a betting transaction with a person under the age of 18 years.<sup>38</sup> 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.<sup>39</sup>

There is also a range of sanctions for non-compliance with the Gaming and Lotteries Acts, and these sanctions were recently increased with the commencement of the Gaming and Lotteries (Amendment) Act 2019. 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’.<sup>40</sup>

#### 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 had until 10 January 2020 to implement these new rules into their national legislation. Ireland missed that deadline. Rules contained in AMLD5 were transposed into Irish law by the Criminal Justice (Money Laundering and

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34 Betting Act 1931 Section 2A(2).

35 Betting Act 1931 Section 2A(3).

36 Betting Act 1931 Section 32B(1).

37 Betting Act 1931 Section 32B(10).

38 Betting Act 1931 Section 23(1).

39 Betting Act 1931 Section 23(3).

40 Report of the Interdepartmental Group ‘Review of Gaming and Lotteries Acts 1956-86’ at p. 2.

Terrorist Financing) (Amendment) Act 2021, which amended the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010, the primary piece of anti-money laundering legislation in Ireland.

At the EU level, these rules were upgraded as leaders called for a collective European effort following the wave of terrorist attacks. The Commission urged 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 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, for example, bitcoin, which could be exploited for fraudulent gains in any financial system, including via 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. In Ireland, providers of 'virtual asset services' are now required to register with the Central Bank of Ireland as a virtual asset service provider or 'VASP' before providing any of the virtual asset services as defined in the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010. It should be noted that this registration requirement is for AML purposes only.

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. The focus of AMLD6 is to create a Union-wide joined-up response to the criminal aspect of money laundering as well as enforcement. AMLD6 was due to be transposed by all Member States by 3 December 2020. Ireland, along with Denmark, was not under an obligation to transpose this regulation, though it may be considered in the future.

It is anticipated that there will be a further obligation to report suspicious betting activity or suspicious patterns of betting activity to the Gambling Regulatory Authority, once established. See Section VII for further detail.

## **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 2021 Scheme envisages the enactment of a code of practice relating to advertising that operators will be obliged to comply with. Having regard to the 2021 Scheme, it suggests that the advertising code will include restrictions on issues such as:

- a* the times, each day, when gambling may be advertised on media platforms;
- b* the volume and frequency of gambling advertising during sporting event broadcasts;
- c* the use of children or animated characters in advertisements that may appeal to children;
- d* use of well-known figures; and
- e* the advertisement of any licensed game, service, activity or product at a cinema (which would include on a vessel or plane belonging to a company established in the state).

The 2021 Scheme also envisages the enactment of a code of practice that operators will be obliged to comply with in relation to sponsorships. As drafted, the 2021 Scheme would include prohibitions on the sponsorship by gambling operators of any:

- a* event, where the primary purpose or intention of that event is to appeal to children;

- b* organisation, club or team where children are members;
- c* branded clothing or apparel;
- d* locations and stadium branding, including any sports training ground, playing field or fields, or a sports venue or venues, that may be accessible or used by children; and
- e* any advertising displayed in such a location.

The 2021 Scheme also proposes restrictions on the type of promotions that gambling operators will be allowed to provide to customers. In particular, it suggests that gambling operators will be prohibited from offering the following types of inducements to customers:

- a* free bets or opportunities to keep gambling free of charge;
- b* offers to entice players to keep gambling who have requested a return of their money;
- c* offers to return players' losses as an enticement to keep gambling or on condition that players are kept gambling;
- d* offers of advanced credits or tokens; and
- e* offers of enhanced treatment (i.e., offers of better odds).

The Gambling Regulatory Authority will also be responsible for requiring safeguards to address problem gambling, including in relation to the advertising of gambling and sponsorship by gambling providers. See Section VII for further detail.

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 took effect from 1 June 2017 governs commercial communications such as advertising, sponsorship and product placement on Irish licensed television and radio stations. The revised Code 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 bet<sup>41</sup> 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.

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.

The Gambling Regulation Bill 2021 includes a number of player protection measures that seek to protect players’ interests. The proposed player protection measures include a ban on the provision of free bets. See Section VII for further detail.

**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,<sup>42</sup> 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 2015<sup>43</sup> 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.

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41 ASAI Reference: 26230, [www.asai.ie/complaint/leisure-betting-4](http://www.asai.ie/complaint/leisure-betting-4).

42 ASAI Reference: 24857, [www.asai.ie/complaint/leisure-betting-3](http://www.asai.ie/complaint/leisure-betting-3).

43 ASAI Reference: 22538, [www.asai.ie/complaint/leisure-betting-2](http://www.asai.ie/complaint/leisure-betting-2).

## VII THE YEAR IN REVIEW

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’.<sup>44</sup>

The heads of a Scheme were published on 15 July 2013 (the 2013 Bill).<sup>45</sup> The intent of the 2013 Bill 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.

Limited progress was made following the publication of the 2013 Bill. However, a number of high-profile cases involving prominent sportspeople and gambling addiction, coupled with increased public concern about children under 18 engaged in gambling activities, led to an increased political desire to implement legislation to fundamentally 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 2013 Bill in favour of drafting and publishing an updated Scheme, on the basis that the 2013 Bill was, on reflection, outdated and no longer fit for purpose.

The Programme for Government, published on 29 October 2020, commits the government to establishing ‘a gambling regulator focused on public safety and well-being, covering gambling online and in-person, and the powers to regulate advertising, gambling websites and apps’.<sup>46</sup>

As stated in Section II, the 2021 Scheme was published on 21 October 2021. The purpose of the 2021 Scheme is to implement the commitment in the Programme for Government by providing for an improved and modern approach concerning the licensing and regulation of gambling in Ireland today that reflects the reality of the various gambling activities available in the state and recognises the impact of technology on the conduct of such activities.<sup>47</sup>

The 2021 Scheme has been approved by the government for priority drafting and publication and the drafting of the bill is now underway.

On 8 February 2022, James Browne TD stated in relation to drafting of the Gambling Regulation Bill 2021:

*A Programme Board has been established in my Department to ensure that the legislation and the operational preparations are progressed in parallel so that the Authority commences operations as soon as possible after enactment. There is a pathway mapped for this legislation progressing, which will facilitate the Authority being established and operational in 2023.*

*The Authority will have the necessary enforcement powers for licensing and to enable it to take appropriate and focused action where providers are failing to comply with the provisions of this Bill and with the Authority’s licensing terms and conditions, regulations and codes.*

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44 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](http://www.justice.ie/en/JELR/Pages/PR11000178).

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

46 Department of the Taoiseach, Programme for Government: Our Shared Future, <https://www.gov.ie/en/publication/7e05d-programme-for-government-our-shared-future/>.

47 Department of Justice, ‘General Scheme of the Gambling Regulation Bill’, <https://www.justice.ie/en/JELR/Pages/General-Scheme-Gambling-Regulation-Bill>.

*Certain pragmatic prohibitions are being put forward to minimise the ill-effects of gambling. Such measures include the establishment of an exclusionary register and the prohibition of credit facilities and inducements.*<sup>48</sup>

Outlined below are a number of the key features of the 2021 Scheme.

### **i Independent regulatory authority**

In a significant departure from what was originally proposed, it is now proposed 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).

The creation of a new independent Gambling Regulatory Authority is included in the 2021 Scheme. The Gambling Regulatory Authority will be solely responsible for regulating the provision of, and licensing of, gambling services and activities in Ireland.

The 2021 Scheme provides that the Gambling Regulatory Authority will be responsible for:

- a* the proper and effective licensing and regulation of gambling activities in the state;
- b* requiring safeguards to address problem gambling, including in relation to the advertising of gambling and sponsorship by gambling providers; and
- c* preventing gambling from being a source of, or support to, crime.

Minister Browne noted that the Gambling Regulatory Authority, ‘will have the necessary enforcement powers for licensing and to enable it to take appropriate and focused action where providers are failing to comply with the provisions of this legislation’.<sup>49</sup>

### **ii Licences and licensing**

Part 3 of the 2021 Scheme deals with licences and the licensing regime.

The proposed licence structure provides for three broad categories of licences (for both in person and remote services) and includes:

- a* a business to consumer category;
- b* a business to business category; and
- c* a specific category of licence to regulate gambling activities for charitable and philanthropic purposes.

The proposed three categories of licences is a welcome departure from the initial 2013 Bill which included a total of 43 separate licences which operators could potentially require. The licence structure proposed by the 2021 Scheme should assist in streamlining the licensing process for both land and online operators.

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48 The Houses of the Oireachtas, Proposed Legislation Dáil Éireann Debate, Tuesday - 8 February 2022, <https://www.oireachtas.ie/en/bills/bill/2021/48/>.

49 Department of Justice Press Release dated 21 October 2021, ‘General Scheme of Gambling Regulation Bill’ <https://www.gov.ie/en/press-release/426dd-minister-browne-publishes-general-scheme-of-gambling-regulation-bill/>.

### **iii Compliance and enforcement**

Part 4 of the 2021 Scheme provides the Gambling Regulatory Authority with statutory powers to enforce the proposed licensing regime. Many of the proposed powers mirror those included in the 2013 Bill.

Some of the proposed powers of the Gambling Regulatory Authority under the 2021 Scheme include the power to:

- a* impose appropriate penalties for non-compliance;
- b* import administrative financial sanctions;
- c* shut down a provider's operations;
- d* stop payments to a provider;
- e* revoke or suspend licences;
- f* inspect and request information; and
- g* conduct investigations.

The 2021 Scheme provides that both the licence holder and the responsible officers of that provider may be legally liable in circumstances where a relevant offence has been committed.

### **iv Safeguards, advertising, sponsorship and social impact fund**

Part 5 of the 2021 Scheme contains certain restrictions concerning advertising gambling services. See Section VI for further detail on the type of restrictions that are included in the 2021 Scheme.

The 2021 Scheme will also establish a social impact fund that will be used for the purposes of financing research and information, education and awareness raising measures, and appropriately supporting problem gambling treatment activities by relevant health professionals. The contributions required to be made will be calculated by the Gambling Regulatory Authority taking into consideration: (1) the size of the licence holders' operations; (2) the gambling services and activities offered by the licence holder; and (3) the licence holders' turnover.

## **VIII OUTLOOK**

In its Action Plan for 2021, the Department of Justice and Equality has set ambitious targets with respect to the publication of legislation and the establishment of an independent gambling regulator. In an era dominated by covid-19, it remains to be seen whether these targets will be met, but it certainly seems that the Irish government is determined to reform gambling law in Ireland in the short term.

While the 2021 Scheme is just the heads of scheme, there is now a clear pathway for legislative reform with the 2021 Scheme being submitted for drafting to the Office of Parliamentary Counsel and an aim for the new legislation to be in force in 2023.

## ABOUT THE AUTHORS

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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.

He maintains a particular focus in the area of intellectual property and has advised a wide range of domestic and international clients on the tax aspects of setting up operations in Ireland to exploit and develop intellectual property.

Alan leads the firm's betting and gaming group. Prior to joining McCann FitzGerald, Alan spent a number of years as director of tax in Paddy Power Betfair Plc, with responsibility for managing the group's tax affairs across multiple jurisdictions. As such, he has significant first-hand experience of the regulatory and taxation aspects of the betting and gaming sector. Alan writes and lectures on all topics relating to his practice and is a frequent contributor to client briefings, including recent publications on licensing and advertising issues as they arise in the betting and gaming sector.

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