

THE GAMBLING LAW
REVIEW

EIGHTH EDITION

Editor
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PREFACE

*O yes, I know about gambling, and am quite used to living on the edge of one abyss or another.
Incidentally, publishing nowadays is not one of the safer occupations.*

(T S Eliot. Letter to Ormerod Greenwood 1934)

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

In the three prefaces to this work since April 2020, my attention has been distracted by the ‘abysses’ of various world events and their bearing on our social and economic lives. In those editions I tried to assess how those events might impact on the landscape of the gambling and entertainment industry. I offered some predictions on how the covid pandemic would change our world of work, our homes, our social interactions, the way that we spend time on leisure pursuits and our use of public and retail spaces.

Of course, the cultural and economic impact of covid-19 is not the only force that has been bearing down on us recently. The spike in energy and grain prices caused by the conflict in Ukraine has also caused the world’s economies to stumble just at the point where they were trending towards recovery. But just as human folly creates crises, human ingenuity is finding ways of stabilising them, by swiftly moving to having less reliance on energy from a single source and indeed less reliance on fossil fuels in general. Perhaps one day we will look back at 2022 as the year that spurred the western world to achieve a greener fuel economy in years, rather than over decades.

The economic earthquakes of pandemic and war are subsiding (at least for most developed economies). We are now dealing with the aftershocks in the form of problems in the global supply chain, resulting inflation and governments’ answer to inflation; higher interest rates. For some months, the cures being offered by government have seemed almost as painful as the disease itself, but with summer coming, we are beginning to see the inflationary curve flatten. Most economic opinion seems to agree that the leading economies will avoid recession, and that 2023 will end with a return to growth, and a much-awaited re-stabilisation of the economic environment. There are also signs of regrowth in some of our old habits towards going back to work and traditional social pursuits. In other words, we are going back to the way that we used to be, albeit armed with the experience of knowing that it is not the only way of working, living or enjoying life. Rigid life patterns have become more flexible, more hybrid.

So, as we emerge as from between abysses both natural and man-made and with the existential threats to the leisure economy now behind us, it is time to look again at gambling with fresh eyes.

In my jurisdiction at least, review and reform have been the watch words for some years, but can hardly be said to have made swift progress. For almost three years, the UK

government has promised a white paper to review gambling law. Initially described as a once-in-a-generation opportunity to reform the law, the review was widely heralded as a way of addressing changes in the gambling market that could not have been anticipated by the legislation in 2005. In late 2020, the government began the process with a call for evidence from operators and interested parties in response to 50 or so written questions. Around 16,000 separate responses were received. That showed, if nothing else, that the reform of gambling law was something that excites public interest.

Limiting the scope of the review to specific questions was, in my opinion, a suboptimal path. Although asking focused questions is important to give order to a debate, it also effectively means that important areas where reform might be needed were excluded from view. Such a technique may suit the government's agenda, but it presupposes that the government knows what areas of the law actually need reform.

If the approach was imperfect, the execution was (until the very last moment), still more disappointing. In the two years since the call for evidence closed, nothing was forthcoming. Why? In our view there were two factors. First was that government fell into crisis: preoccupied by covid-19, Brexit and its own internal political tensions, three prime ministers stood at the helm in a period of less than six months. The cabinet reshuffles that came with each change meant that the responsibility of managing reform of gambling passed through the hands of no fewer than six different ministers. No one was in post long enough to master the issues. Consequently, the public was consistently promised that the white paper would be published 'within a few weeks' for almost a year.

But political turmoil was not the only cause of the delay. What has become increasingly clear over the past two years is that gambling reform is a battleground between the commercial desires of operators to continue their businesses and those whose focus on opposition to gambling is fundamental and visceral. Those who seek to justify gambling largely base their arguments on statistics about low levels of gambling harm, while those who campaign for greater protections rely increasingly on the social policy tool known as 'lived experience'. Lived experience has the benefit of seeing an issue through the intensity of an individual's actual perception and acquires its power from being personal and 'authentic', but its weakness is that it describes a single viewpoint, not a balanced picture.

It is impossible to know what evidence was provided in response to the call for evidence (it has not been published), but it can be imagined that it was a combination of generalised statistics showing that problem gambling is rarer in society than many other social evils, set against stories of individuals whose lives have spiralled into addiction and ruin. It is very hard for anyone (still less a freshly appointed minister with little experience of the gambling industry) to find a way of reconciling those two very different 'sources of truth'. Consequently, the government faced some very difficult policy choices – to intervene and be accused of acting like a nanny state, interfering in the personal freedom and leisure of adult citizens, or to take a more liberal approach and face heated criticism from opposition politicians and the press, highlighted with the truly tragic stories of those whose lives are ruined or even ended by addiction.

Conference speaking slots came and went, speculation and leaked drafts did the rounds, and nothing turned up. As time passed in 2023, the publishers of *The Gambling Law Review* were asked to extend the deadline for my own contributions, to the very point where the printing presses were about to whirl into action.

Of course, the day after my deadline, the white paper finally arrived, in a flurry of a mere 93,000 words. What were the odds of that?

It happens that I have managed to provide a few paragraphs of commentary on the proposals in the UK chapter (but there will no doubt be much better analysis written by others in the months to come).

The government's response has been pragmatic: ask interested parties what they want, and then deliver a set of compromises, which seek to steer between the two extremes. However, the absence of a white paper for so long forced me to ask myself what the right approach to deciding a regulatory policy should be.

i Understanding what to regulate

For me, there is a very important initial stage to regulation that is often overlooked. The totemic triumvirate of gambling – betting, gaming and lottery – are seen as immovable concepts rooted in history and tradition and forming the foundations of gambling policy. In seeking reform, we look at the existing position, and ask what can be done to improve it. However, anyone with a historical view of gambling will recognise that the current legal position is layered with artificial distinctions, traditions and terminology that are more a product of history and culture than of good sense and principle. There is no reason to think that the way that products dating back at least as far as the 16th century should survive intact and protected in the 21st century. Why should lotteries involve giving to charity? What are the outside limits of the term 'game'? When does betting blend into speculative investment? What new gambling products are coming to the marketplace? How should social games and pastimes be distinguished from sport and gambling? Why do we encourage children to learn chess, but not poker? How does one define the barrier between betting in the course of a business and betting as a hobby? These are all the types of question best addressed before simply adjusting the existing machinery.

The government's given reasoning behind the white paper is that technology has moved on since 2005, changing the public's ability to access gambling. It may be true that smartphones only really became popularised after the launch of the iPhone in 2007, but in fact the change has been more profound than just more accessible computing power. The public is accessing risk-based activities, some of which are new, and many of which are old but have recently been democratised. Society has many different views about risk-taking, most of which are muddled in one way or another based on a misunderstanding of probability compounded by superficial tropes perpetuated in the media. There is a spectrum of risk-based activities and entertainments, from pastimes to speculative investments to sports and gambling, and each tends to come with a predetermined label, from harmless fun through to dangerous addiction, without any real thought about revising the map of regulation to fit the evidence of potential harm. Our current law therefore sometimes draws sharp regulatory distinctions between activities that are barely distinguishable when viewed through a more neutral lens. Here are some examples from the UK:

- a* The UK imposes a legal requirement on lottery operators to donate a minimum contribution of 20 per cent of proceeds to a good cause, protect customer funds in trust accounts and ensure that the software used to generate the random division of prizes is fair. By contrast, free prize draws and 'skill competitions' (which usually determine winners from a chance-based draw) are subject to none of these restrictions. They may target children and be conducted by those who would never pass the tests of suitability imposed on their regulated counterparts. We do not even measure whether addiction or other harms are caused by such products, because they are not treated as gambling.

- b* Nearly identical activities are governed by completely different regulatory protections. Take a bet on a football match, for example. One can place a fixed odds bet or a spread bet on the result (and easily do both with the same organisation at the same time). The fixed odds bet is regulated by the Gambling Commission, which holds the bookmaker to the licence conditions mandating a host of protections including customer self-exclusion, time-outs, a complaint and dispute procedure and a requirement for fairness of contractual terms (and soon, very likely, assessments of affordability or markers of potential harm to be carried out by the operator). The second bet is treated as a contract for difference and regulated by the Financial Conduct Authority. The spread bet is of course the more risky and volatile of the two products, because the gambler's potential loss can massively exceed the deposited stake. And yet, the spread bet is outwith the scope of gambling and not subject to any of the same protections.
- c* The UK views insurance and betting as totally different products. The public is generally encouraged to insure against risk, and is usually warned against excessive betting on it, even though the two activities share almost every attribute. Each is a hazarding of value on a future uncertain event. Each market is operated by a risk manager that seeks to guarantee itself a profit by assessing the actuarial probabilities of an event occurring and then devising a price for customers to pay that means that the organiser will make money at the expense of its customers. In the UK we happily allow the government to operate a form of lottery as an investment entirely outside the rules of gambling regulation in the form of the 86 billion premium bonds currently issued, which are entered into a random draw each month. (Children can own up to £50,000 of premium bonds).
- d* Regulators (rightly) spend much time worrying about the possibility of children and young people gambling on or being influenced into gambling by advertising. At the same time, there is almost no regulation of video games, even where those games include mechanics for chance-based winning that mimic those of slot machine gambling. A child can hone his or her skills playing poker or blackjack, provided he or she is not staking money. He or she can spend money on random draws for prizes so long as those prizes are only valuable in the context of the game and do not have 'real world value'.

We also need to think about whether different gambling products within the same regulatory category should be treated differently. For example, most state lotteries have weekly or daily draws with small stakes, life-changing jackpots and relatively poor returns to players. Consequently, they are thought of as being low-risk products. But if one develops an instant lottery operating online, which pays out 75 per cent of stakes, then it will play and feels more like a slot machine and drive similar behaviours. So why are instant lotteries not regulated like slot gaming? In short, we need to go back to basics on gambling.

ii Being honest about how much we want to regulate

Once one has defined those activities that should be regulated (ignoring whether or not they conform with the historical legal definitions of gambling), the second challenge is to be transparent and honest about what regulation is designed to achieve (and the results that will arise). Some governments will look at gambling from a purely religious perspective, and that is a perfectly proper position to take (albeit one that is based on moral rather than rational

principles). However, most governments seek to regulate based upon either the risk of harm to players or the risk of associated criminal conduct. We know that both of these harms are likely to occur to some extent when gambling is permitted.

In response, it is possible to conceive of a policy based on the principle that the harms caused by gambling are so great that it should be entirely banned. To be clear, my own view is far from that, but I want to acknowledge that it is not an irrational approach: there are plenty of things that our society has decided to ban, because of the perceived risks and harms, even after centuries of use. For example, laudanum (a form of opiate) was freely available for purchase throughout the 18th and 19th centuries in the UK, and was widely used and cheaper than alcohol (and even recommended as a way to calm babies). It was of course addictive and could have very bad side effects, but was seen in working class industrial society as a useful hangover cure. Over time, society decided that it was undesirable for laudanum to be easily available to the public and moved to restrict its availability and (in 1920) ban its sale altogether. Looking back a hundred years, we may find it hard to believe that an addictive and dangerous substance should have been freely available for purchase (even if many used it to 'enjoy it without encountering significant harm'). However, that which was once acceptable to society became impermissible. In the same way, imposing heavy restrictions or a ban on forms of gambling is a possible policy conclusion.

However, once one takes the view that gambling activities are generally to be permitted as part of normal adult activity, then one is implicitly accepting that there will be social costs in terms of addiction and unwise gambling behaviours. That is a price that our society has decided to pay. One must accept the consequences of that decision, and not blame those who provide the product. The political slogan that 'even one problem gambler is one too many' may have a rhetorical flourish to it, but it is intellectually dishonest. When government permits (indeed engages in and itself promotes) an activity that has the potential to give rise to harms, government and society thereby acknowledge that a certain level of harm will inevitably follow and acknowledge that it is an acceptable price. Lest it be said that this is an inflammatory way of looking at the matter, it is no more than our approach to speed limits, ownership of firearms, the purchase of fireworks or the availability of alcohol or high fat foods. We desire the freedom to choose, and accept that there will be resulting harm. Rather than ban, we prefer the possibility of living in a society where state control is exercised by exception only and education and personal responsibility are the general means of control.

iii Making regulation effective

Effective regulation consists of measures that can be shown through evidence as being effective measures against excessive harm and that are no more restrictive than necessary to curtail that harm to the levels that society accepts will exist. That is the test against which all restrictive regulation must be judged. Our current gambling laws and regulations are said to be based upon a principle of risk and, by so saying, we accept that they will not be perfect models. The question must not be 'does this measure reduce the harms of gambling?', because every restrictive measure does that to some extent. The test is rather 'does this measure reduce the harms of gambling without imposing an undue regulatory burden on operators and those parts of the public who do not require protection?'. We must, unfortunately, accept that there is a level of gambling harm that is acceptable, and that any protective policy net will experience failures. Those failures need to be addressed and considered, but they must not (always) be held up as a demonstration that the policy itself is at fault. And since we are balancing the needs of industry with those of its customers, there should be an impact

assessment that evidences the cost of implementing and imposing any particular change to regulation when marked against its benefit. So often, a well-intended change to tighten the law merely leads to an unintended consequence elsewhere. Few would argue, for example, that self-exclusion was a powerful tool to aid the vulnerable. But what of those (foreign) casinos that now actively target customers who have self-excluded? The white paper imposes affordability checks on remote operators, but does that merely encourage those who wish to gamble outside the protective regime to seek out land-based bookmakers who are not subject to the same rules? So innovative solutions may solve old problems, but they tend also to stimulate new ones.

I wish to thank the 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. In the meantime, it is my great pleasure to present the 2023 review of gambling laws across 23 jurisdictions.

Carl Rohsler

Memery Crystal

London

May 2023

IRELAND

*Alan Heuston*¹

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

The word bet is not currently 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 currently governed primarily by the Gaming and Lotteries Acts 1956–2019 (the Gaming and Lotteries Acts).

1 Alan Heuston is a partner at McCann FitzGerald.

2 [2009] IEHC 133.

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 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

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 currently 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 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 is, instead, 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 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, that participants’ interests are protected and 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. Bord na gCon (the national greyhound board) is licensed to operate a totalisator at greyhound tracks.

3 Gaming and Lotteries Act 1956 Section 2.

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’.

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 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

Currently 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

Currently, 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.

ii Gambling policy

Although gambling has a long history in Ireland, the Irish authorities have recognised that the legislation governing gambling requires modernisation.⁷ Currently, 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 currently 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.

For many years there has been an acceptance at a governmental level in Ireland that the existing laws and regulation for gambling in Ireland are outdated and in need of reform.

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

In December 2022, the Minister for State for the Department of Justice and Equality, James Browne unveiled the Gambling Regulation Bill (the Bill). The Bill, once enacted, will represent the most significant overhaul of gambling regulation in Ireland since the foundation of the Irish state.⁸ The Bill sets out the framework for the future regulation of all forms of gambling services in Ireland. It also provides for the establishment of a new independent regulator, the Gambling Regulatory Authority of Ireland. The Bill, 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 telegraph (whether wireless or not).⁹ It is clear from the list of operators who have obtained the necessary licences¹⁰ 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 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 provision of unlawful gaming products, so it is important that operators are familiar with these provisions.

8 Gambling Regulation Bill 2022.

9 Betting Act 1931 Sections 1 and 7C.

10 Available from the website of the Irish Revenue Commissioners.

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 providers, 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.

Following enactment of the Bill, with the exception of the National Lottery Act 2013, all of the above listed Acts will be revoked,¹¹ and the Bill will govern all forms of gambling in Ireland.

ii The regulator

There is currently no Irish equivalent to the UK Gambling Commission. The Bill will see the establishment of the Gambling Regulatory Authority of Ireland (GRAI), which will be responsible for the regulation of all forms of gambling in Ireland with the exception of the National Lottery. 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, that participants' interests are protected and that the long-term sustainability of the Irish

11 S9 Gambling Regulation Bill.

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.

The Bill will afford significant powers to the GRAI in its role as the gambling regulator, which shall include but is not limited to the following:

- a* the licensing, supervision and control of gambling activities in Ireland;
- b* the establishment and maintenance of a register of gambling licensees;
- c* the establishment and maintenance of the National Gambling Exclusion Register;
- d* the establishment and maintenance of the social impact fund;
- e* the establishment and certification of standards for certain gambling products and related gambling services;
- f* the imposition of obligations on licensees and other persons in relation to advertising, branded clothing and merchandise;
- g* the imposition of obligations on licensees in relation to the protection of children, sponsorship, training of staff, notification of suspicious gambling patterns and the maintenance of accounts and records;
- h* the monitoring and enforcement of compliance;
- i* the enhancement of public awareness in respect of the licensing and regulation of gambling products; and
- j* the conducting of research in relation to gambling activities and their potential harm.¹²

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 2019.¹³ 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.

12 S14 Gambling Regulation Bill.

13 www.revenue.ie/en/companies-and-charities/excise-and-licences/excise-duty-rates/betting-duty.asp.

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.

The Bill legislates for different licences for in-person and remote gambling. The criteria to be disclosed on an application for a gambling licence will now depend on whether the activity takes place in-person or by remote means and the type of gambling product or gambling-related service that the proposed licensee wishes to provide. See Section III for further information.

iv Land-based gambling

The Betting Acts envisage the business of bookmaking being carried out in registered bookmaker's premises.¹⁴

Casinos are currently 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 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 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. Bord na gCon is licensed to operate a totalisator at greyhound tracks.

v Remote gambling

Currently, 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 that may be located in Ireland or abroad.

As stated in Section IV, online gaming products such as casinos, slots and bingo are currently 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

14 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'.

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)'.

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

Currently 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.

However, the Bill requires providers of a gambling-related service¹⁷ to obtain a licence in order to continue to provide these services within six months after the enactment of the Bill.¹⁸

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 Bill is enacted (see Section VII).

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.¹⁹

Under the 2015 Act, a licence can now be taken out by a body corporate as well as an individual.²⁰ The application process for the three types of licences essentially involves two

17 A gambling-related service means any service provided, directly or indirectly, in the course of business that relates to a gambling activity or a gambling product, or is ancillary to a gambling activity or a gambling product, and includes providing, for the operation of a gambling activity:

- a* odds to licensees;
- b* online hosting services;
- c* support and maintenance that is indispensable to its operation;
- d* risk management services;
- e* fraud management services;
- f* services to implement measures to protect and safeguard players;
- g* facilities for the holding and managing of customer funds;
- b* the installation, maintenance or upgrading of software; and
- i* any other service the Authority prescribes.

18 S120 Gambling Regulation Bill.

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

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

stages. The applicant (or in the case of an application by a body corporate, each ‘relevant officer’²¹ 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.²² Applications for COPFs from terrestrial bookmakers ordinarily resident in the state must be made to a superintendent of the Irish police.²³ The superintendent or Minister for Justice has up to 56 days to either grant or refuse an application.²⁴

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 COPE, a valid tax clearance certificate and payment of the licence duty.²⁵ A licence will be issued by the Irish Revenue Commissioners where the application meets all requirements and on payment of the appropriate licence duty.²⁶ 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.²⁷ The licence may be paid in full at the time of application or renewal or in two equal instalments.²⁸

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.²⁹ Bookmakers’ licences will expire on 30 November of every second year.³⁰ 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.³¹ 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.³²

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.

21 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.

22 Department of Justice and Equality, ‘Gambling’ www.justice.ie/en/JELR/Pages/WP15000254.

23 *ibid.*

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

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

26 *ibid.*

27 *ibid.* footnote 22.

28 *ibid.* footnote 22.

29 *ibid.* footnote 22.

30 *ibid.* footnote 22.

31 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.

32 *ibid.*

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, 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 must be no additional charge for the redemption of a prize. Promoters of these competitions should note that the prohibition 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 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:

- a* the holder of the licence must derive no personal profit from the lottery;
- b* 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 premises, this information must be prominently displayed at the normal means of access to the premises proposed to be used;
- c* 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;
- d* 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;
- e* 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; and
- f* the allocation of the proceeds referred to above must be made within one month from the date of the holding of the lottery.

ii Licensing under the Bill

The Bill proposes the introduction of a comprehensive licensing regime for all forms of in-person and remote gambling activity in Ireland, including gaming, betting and lotteries. It is planned that there will be three broad types of licence. The detail on what gambling activities, products and services that can be offered under each licence will be specified by the GRAI. The three broad types of licences are:³³

- a* business to consumer (B2C) licences;
- b* business to business (B2B) licences; and
- c* charitable and philanthropic licences.

Each licence type can be in the following forms:

- a* a betting licence (in-person betting, remote betting, in-person and remote betting or remote betting intermediary);
- b* a gaming licence (in-person gaming, remote gaming or in person and remote gaming); or
- c* a lottery licence (in-person lottery, remote lottery or in person and remote lottery).

In addition to these various licences, the GRAI will have powers to establish certification requirements for gambling products and services. Consistent with existing exemptions, certain gambling activities won't require a licence, including one-off small lotteries for charitable or philanthropic purposes (provided the total prizes do not exceed €2,000) and lotteries held in conjunction with the selling or marketing of products (subject to a prize limit of €5,000. The current limit under the existing regime is €2,500.).

33 S83 Gambling Regulation Bill.

iii Sanctions for non-compliance

It is an offence to act as a bookmaker, a remote bookmaker or a remote betting intermediary without a licence.³⁴ 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.³⁵ 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.³⁶

It is an offence to represent oneself as a bookmaker, a remote bookmaker or a remote betting intermediary without a licence.³⁷ The penalty for this offence is a class A fine on summary conviction or, on conviction on indictment, a maximum fine of €100,000.³⁸ Where a further offence is committed, conviction on indictment carries a maximum fine of €250,000.³⁹

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.⁴⁰ 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.⁴¹

It is an offence to make a bet or engage in a betting transaction with a person under the age of 18 years.⁴² 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.⁴³

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’.⁴⁴

The Bill provides that financial penalties and even prison terms can be applied to those found guilty of an offence in contravention of the provisions of the Bill. The financial penalties

34 Betting Act 1931 Section 2(1).

35 Betting Act 1931 Section 2(6).

36 Betting Act 1931 Section 2(7).

37 Betting Act 1931 Section 2A(1).

38 Betting Act 1931 Section 2A(2).

39 Betting Act 1931 Section 2A(3).

40 Betting Act 1931 Section 32B(1).

41 Betting Act 1931 Section 32B(10).

42 Betting Act 1931 Section 23(1).

43 Betting Act 1931 Section 23(3).

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

are limited to €20 million or 10 per cent of the turnover of the offender.⁴⁵ Depending on the severity of the offence, the period of imprisonment legislated for in the Bill can be up to eight years.

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 of, 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 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 a 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 AMLD4 to require Member States to take steps to ensure that gambling service providers who offer virtual currencies as a 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 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 anti-money laundering 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

45 S197 Gambling Regulation Bill.

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, although 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 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, decisions of the Advertising Standards Authority of Ireland 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.

A central theme of the Bill is the protection of consumers and the vulnerable. The Bill includes extensive safeguarding measures that seek to protect players' interests. In addition, the GRAI will be given significant delegated authority to implement further measures to address areas that it believes are of concern. Some of the key provisions of the Bill dealing with advertising and sponsorship include (but are not limited to):

- a* prohibitions on the offering of inducements to a person to participate in a gambling activity;
- b* prohibitions on advertising gambling products on social media platforms (to include advertising on video-sharing platforms, social media websites as well as by telephone, text or email) unless the person receiving the advertising has explicitly opted into receiving the gambling advertising content;
- c* watershed for advertising gambling products on television, radio or on-demand social medial platforms between the hours of 5.30am and 9pm;

- d* prohibitions on advertising that may mislead, deceive or confuse the public about the potential social or financial impact of gambling products;
- e* prohibitions on advertising that may be attractive to children, encourage children to gamble, or exploit the credulity, loyalty or vulnerability of children;
- f* prohibitions on advertising that may cause, condone or encourage excessive or compulsive gambling;
- g* requirements that all advertising specifically include a statement that gambling by children is prohibited, and a warning on the risks of excessive or compulsive gambling and where information on how to address such issues can be found;
- h* prohibitions on the manufacture, import or sale or supply free of charge of branded clothing or merchandise intended to be worn or used by a child;
- i* prohibitions on the sponsorship by a licence holder of any event or part of an event where:
 - the majority of those attending or competing are children;
 - the event or part of an event is aimed at children;
 - the event or part of an event involves an organisation, club or team of which children are members;
 - the premises used by an organisation, club or team are premises of which children are members; or
 - the event or part of an event involves a public activity that appeals to children; and
- j* requirements that licensees provide approved training to staff to enable them to identify problem gambling characteristics and to have detailed knowledge of the supports that are available to the public.

VII THE YEAR IN REVIEW

The Programme for Government, published on 29 October 2020, committed 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’.⁴⁶

On 2 December 2022, the Minister for State, James Browne, revealed the Gambling Regulation Bill. Outlined below are a number of the key features of the 2021 scheme.

i Independent regulatory authority

The Bill legislates for the GRAI, a new independent gambling regulatory authority. The GRAI will be solely responsible for regulating the provision and licensing of gambling services and activities in Ireland.

The Bill provides that the GRAI will be responsible for:

- a* the licensing, supervision and control of gambling activities in Ireland;
- b* the establishment and maintenance of a register of gambling licensees;
- c* the establishment and maintenance of the National Gambling Exclusion Register;
- d* the establishment and maintenance of the social impact fund;

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

- e* the establishment and certification of standards for certain gambling products and related gambling services;
- f* the imposition of obligations on licensees and other persons in relation to advertising, branded clothing and merchandise;
- g* the imposition of obligations on licensees in relation to protection of children, sponsorship, training of staff, notification of suspicious gambling patterns and the maintenance of accounts and records;
- h* the monitoring and enforcement of compliance;
- i* the enhancement of public awareness in respect of the licensing and regulation of gambling services; and
- j* the conducting of research in relation to gambling activities and its potential harm.

ii Licences and licensing

Part 5 of the Bill 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 B2C category;
- b* a B2B category; and
- c* charitable and philanthropic purposes.

See Section III for further detail about the proposed licensing regime.

iii Compliance and enforcement

The overall aim of the Bill is to encourage compliance rather than enforce sanctions for non-compliance; however, the Bill gives significant capabilities to the GRAI for instances where non-compliance is found. Some of these measures include the power to:

- a* enter licence holders' premises to search and inspect any material, equipment or gambling products in use there. The GRAI's officers may also be accompanied by An Garda Síochána if circumstances deem this appropriate;
- b* secure any material or equipment that the GRAI deems necessary for inspection and hold for an undefined period of time while the GRAI conducts its investigation. This material or equipment may include computers that hold any information relating to gambling activity;
- c* obtain court orders to cease a licence holder's operations on either a temporary or permanent basis, including the closing down of any premises held by that licence holder; suspend or revoke a licence for non-compliance;
- d* apply to the court to have a licensee's bank accounts frozen and stop the licensee from receiving any payments;
- e* apply to the court to have internet service providers block the activity of a remote gambling licence holder; and
- f* the Bill provides that it can apply for court approval to impose administrative financial sanctions, which may be up to:
 - €20 million for an individual; or
 - in the case of a provider that is not an individual, whichever is the greater of €20 million or 10 per cent of relevant turnover of the provider.

There is provision for a period of imprisonment of up to eight years for senior management members of licence holders who are found guilty of offences in contravention of the Bill.

The Bill also provides that the GRAI will be the competent authority for Irish anti-money laundering legislation as it relates to gambling activities.

iv Safeguards, advertising, sponsorship and social impact fund

Part 6 of the Bill contains certain restrictions concerning advertising gambling services. See Section VI for further detail on the type of restrictions that are included in the Bill.

The Bill 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 GRAI. The annual contribution to the social impact fund will be based on a percentage of licensees' turnover. The Bill defines turnover as 'a licensee's total income from gambling, less the total amount paid by the licensee on winnings'. As drafted, it therefore appears that references to turnover in the Bill should actually be interpreted as referring to gross gaming revenue rather than actual turnover of the licensee.

VIII OUTLOOK

The Bill will now go through several stages of parliamentary debates and will be subject to amendments following submissions by stakeholders with a vested interest in the Bill. On unveiling the Bill, Minister James Browne noted 'I am hopeful that, with the support of both Houses, this Bill will be signed into law and enter into force by mid-2023, with the intention of establishing the Authority later next year'.⁴⁷

With the publication of the Bill, there is now a clear pathway for the reform of Ireland's long-outdated laws on gambling, with the stated aim of the government being to have the Bill enacted in 2023.

⁴⁷ <https://www.gov.ie/en/speech/d3950-gambling-regulation-bill-dail-second-stage/>.