

THE  
GAMBLING LAW  
REVIEW

SIXTH EDITION

Editor  
Carl Rohsler

THE LAWREVIEWS

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GAMBLING LAW  
REVIEW

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# PREFACE

*Again, the public showed that they would bear their share in these things; the very Court, which was then gay and luxurious, put on a face of just concern for the public danger. All the plays and interludes which, after the manner of the French Court, had been set up, and began to increase among us, were forbid to act; the gaming-tables, public dancing-rooms, and music-houses, which multiplied and began to debauch the manners of the people, were shut up and suppressed; and the jack-puddings, merry-andrews, puppet-shows, rope-dancers, and such-like doings, which had bewitched the poor common people, shut up their shops, finding indeed no trade; for the minds of the people were agitated with other things, and a kind of sadness and horror at these things sat upon the countenances even of the common people. Death was before their eyes, and everybody began to think of their graves, not of mirth and diversions.*

Daniel Defoe. *A Journal of the Plague Year*

A year ago, I began the preface to the fifth edition by reminding readers of the most famous epidemic that ever troubled Britain: the Great Plague of 1665, which closed the theatres and silenced the ‘jack puddings and merry Andrews’ in London for a whole year. Writing of that same event years later, Daniel Defoe reminds us that despite the passing centuries, the human impact of plague has actually not changed that much. In another passage from his journal, he remarks how he could only pass along the king’s highway if he obtained a paper from a magistrate to say that he was in full health. The judiciary may have been replaced by the PCR swab or the vaccine passport, but the feeling that the public does not enjoy its normal liberties is scarcely different then than now. Another point that Defoe notes, and which we should not ignore, is that the effect of plagues is marked not in inconvenient days or months, but in decades. ‘Plague Bills’ showing the number of deaths in each parish were first published 1665, and the practice was not formally discontinued until 1679. And so, I begin the preface to the sixth edition of *The Gambling Law Review* in similar terms and circumstances as those of last year.

There have been many changes in gambling law and practice over the last 12 months, but, with perhaps a few exceptions (such as Ukraine), they have been of a minor nature, reflecting perhaps that governments have been so overwhelmed by the social and economic impact of the covid-19 pandemic, that they have simply not had the time to revise the intricacies of betting and gaming regulation. So, in many cases, the legal frameworks that applied in 2020 will still apply in 2021. But the chapters that we each write are designed not only to focus on the details of regulatory change but also to canvas broader themes and directions for the future, and so our authors have all had to try to describe what the future will hold, as well as the past 12 months.

Following that theme, I want in this Preface to talk not so much about gambling, but about the state of the world in which gambling exists and the macro-changes that we now face. In that regard, it seems to me that the question so often asked: ‘when things will get back to normal?’ is not really appropriate anymore. The pandemic has had such a sweeping change on the lives of those in the developed world, that not only have we been forced to break our old habits, but have had enough time to discover and develop new ones. So, no doubt we will go back to restaurants and bars again, and sometimes enjoy high street shopping or a trip to the gym. But there will also, undoubtedly, be permanent changes.

In short, the pandemic, like a world war or a crisis of resources, has created a paradigm shift, a step change. We could go back to our old habits and ways of working. But would that really be such a good idea? Should we want to? The First World War, for all its tragic loss of life, brought us into the modern world and forced societal change at the deepest level. The peace in 1918 brought with it a number of social and legislative changes in the UK of key importance in the century that followed. The Education Act of 1918 enforced a compulsory school-leaving age of 14, recognised special educational needs for the first time and introduced school meals. The Representation of the People Act 1918 allowed (certain) women the right to vote for the first time, and the Sex Disqualification (Removal) Act of 1919 prohibited an employer from excluding someone from a job on the basis of gender. The Ministry of Health Act 1919 created for the first time a minister of Health and made the health of citizens a government responsibility. These pieces of legislation were not the immediate effect of war, but the indicators of underlying changes in the way that society had come to view health, education and the role of women in light of the changes that war had wrought on the collective mind. There was no way back to the innocence of 1914, but there was also much to be gained from recognising that the pre-war period contained injustices and social unfairness that could no longer be tolerated in the post-war world.

If we assume that the current pandemic will resonate in socio-economic terms as loud and long as a major war then, as we emerge from its grip, it is useful to identify and predict the things that may change, and the opportunities that exist to establish new habits that will make our lives better and fairer. Identifying such changes and opportunities is very difficult. My own views are shaped by my perspective – which is a middle-aged professional asked to shoulder the minor inconvenience of homeworking, not a young bar-worker furloughed for almost a year, or a nurse on the front line of treatment and still less a Chinese worker from Wuhan – but let’s nonetheless try to uncover some of the themes.

## **i Geography – tectonic shifts in our domestic plan**

### ***Home/work***

The most important collective discovery of the pandemic was our own homes. For millions, it ceased to be the place just to spend evenings and weekends and became the only focus of our lives. Many of us have toyed with the idea of working from home, (or rehearsed the uncomfortable conversation with our bosses about why we do not always need to be in the office). We always thought that we might be more efficient place to work, without a long commute, but there was never the empirical data to justify those theories. Now we have discovered what a year of work without a place of work feels like. The ‘To Let’ boards are springing up in urban centres, and thousands of professionals have experienced the freedoms and inconveniences of a different workplace: our bedrooms, studies, and kitchens. In 2019,

30 per cent of the UK's workforce had experienced working from home. By March 2021, the proportion had grown to 60 per cent.

The implications of this change are in my view very profound. While some are now advocating a return to office life in the summer of 2021, there is increasing evidence that the pandemic will lead to a permanent shift in the workforce away from urban centres and to more suburban and rural settings. Houses with space are more popular and generally cheaper than equivalent houses in towns. The need for large numbers of commuters to move each day to urban centres has been significantly reduced. In short, people will want to work from home more, and homes will feature as more important and valuable resources in our lives. Provided that the communications infrastructure can allow it, more of us will reduce our time in traditional places of work, and very substantially reduce the time travelling to our workplaces. This will have implications ranging from reduction in transport and carbon usage, to the development of smaller towns at the expense of larger cities. We will become a more disaggregated workforce. Over time, that disaggregation may not just challenge existing notions of work–life balance but also blur national boundaries. Once reliance on a physical workplace is diminished, and contributions to working life routinely come via remote communication, then one's workforce can not only be scattered across a country, but just as easily across a continent. We will need to see how employment and tax law deal with these challenges. But in some professional sectors at least, working from home is going to become part of the new normality. That poses challenges for government and infrastructure providers to ensure that our communications networks provide adequate bandwidth outside urban centres as well as within.

### ***Home/school***

The transition away from concentrated work spaces, to disaggregated working and living has some interesting impacts from a technological point of view. We have all become more adept at managing our own domestic IT systems, and fortunately by 2020 most companies' IT systems had developed the resilience to operate on a remote basis. So the transition to home working did not actually require very much in the way of new technology, just a greater acceptance of technology that was already there. To give one indicia, the number of daily active users of Microsoft Teams rose from 13 million in July 2019 to 115 million by October 2020.

Home also became school for many. Where once we worried about the number of hours our children were spending online, we were suddenly grateful that they were at least ready-trained digital natives. A whole young generation whose internet experience was limited to fun and games, began to use their PCs for lessons, exams, projects, Powerpoint presentations and multiparty video conferences with an ease that many of their parents could only envy. Perhaps we need to re-examine whether 'limiting screen time' is really an achievable or even desirable aim. And a young generation will have spent a formative year both working from home, and seeing their parents do the same. That generation has already had its 'home/workplace norms' set differently to the generation before. Thousands have seen the concept of leaving home to go to university completely altered – something that again may be a permanent shift, as we have all discovered that learning yoga, cookery or French are all perfectly possible at a distance. Examinations and ways of rating achievement more generally will also permanently change. The lesson for our educators, is that some types of

experience that had previously considered only to be suitable for ‘real world’ teaching could in fact be engaged with adequately (or even optimally) through remote technology. Again, it is not that these things were not possible before the pandemic – but just that they are now a widely accepted alternative.

### ***Home – the new entertainment hub***

This conveniently brings us to highlight home as the new hub of entertainment. Of course, our living spaces and mobile devices had become the venues for streamed music, entertainment, sport (and increasingly gambling). But in 2020, home also became our shopping mall, restaurant and bar. In the UK, between November 2019 and November 2020 online food delivery increased by 107 per cent. Conversely, by comparison with the number of seated diners in February 2020, the UK figures for February 2021 were reduced by 99.88 per cent. Even when and if those restaurants return, it seems to me that they will be differently regarded. Expectations in terms of what constitutes value for money will have been reset.

Shopping is both a necessary activity and for many a form of entertainment. So far as its necessities are concerned, we have moved profoundly from a ‘travel and browse’ to a ‘click and receive’ model. The level of service provided by online retailers supported by a much enhanced and digitally managed supply chain has provoked a revolution in the way that we shop. It will be interesting to see the effect that this has on what might be called ‘leisure shopping’ – including for lifestyle goods and clothes. Again, a decline in land-based retail has been occurring over the last decade, but the pandemic has surely had a permanent impact. As restrictions are removed there will no doubt be a resurgence of interest in the high street – but probably not to the levels seen before. While there will still be strong demand for public places to enjoy retail experiences, certain types of shopping (for example normal grocery shopping) may well permanently move to an online model. The question then is how, without the support of traditional tenants like supermarkets, fashion, consumer goods and bookmakers will be able to maintain their presence on the high street and in shopping centres.

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. To take one example, National Lottery ticket sales that were predominantly retail based, declined by 18 per cent with the onset of the pandemic, but online registrations subsequently rose by more than 1.3 million. This change is actually a win-win situation for lottery operators and customer alike. The operator now has a direct relationship with customers and does not have to use a retail network to sell tickets or pay commissions. It can know its customer better, check spending patterns, cross market and observe potentially damaging behaviour. For the customer, purchase of tickets is rendered simple, tickets are never lost and numbers are automatically checked. In short, a product that was always very suitable for a remote medium has been pushed by circumstances from retail to online, and it seems unlikely that it will ever go back again. Will the same be true of betting shops adult gaming centres and casinos? I think that it seems clear that casinos will still be seen as entertainment destinations. But the future for adult gaming centres and retail bookmakers seems less certain.

### ***Travel away from home***

One sector that has been disproportionately affected by the pandemic is that of international travel. The future of that industry is very interestingly poised. On the one hand, there is

clearly a very large pent-up demand for tourist travel but, on the other, international travel brings with it a host of difficulties in terms of containment of the virus, and may also involve the public stepping outside its comfort zone. For every tourist eager to get back to normal holidays, there are others concerned by new variants. Restrictions on travel generally have had a significant impact on the world's carbon emissions (indeed we have seen the largest annual decrease in carbon emissions since 1900). So will we go back to a life of weekend breaks and convenience tourism? I think that the answer is probably 'yes, we will'. After all, at least for those in the northern parts of Europe and America, holiday travel involves one type of experience that cannot yet be delivered online – sunshine!

The picture for travel therefore seems a nuanced one: it will be harder to justify business travel, when we are not even commuting as much, but it seems likely that tourism will quickly revive to its pre-pandemic levels. Such travel will of course include the traditional gambling and sport hotspots, and hopefully attendance at sporting and tourist event will soon recover – something very much needed by many economies that have suffered profoundly in the past year.

## **ii The richer and poorer**

The pandemic has caused a monumental economic shock. The FTSE, Dow Jones and Nikkei all saw huge losses in the early months of 2020, with the FTSE dropping 14.3 per cent during 2020, its worst performance since the credit crisis of 2008. The announcement of vaccines has caused many of the major indices to rise sharply, many to well above pre-pandemic levels, but stock prices are to some extent speculative reflections of future hopes, and do not adequately reflect the huge long term borrowing in which almost every government has had to engage. Those who print money, have placed their reputations on the line, and over the next decade are either going to have to grow or tax their way out of the crisis. Some extra burden will inevitably fall on the public.

At the household level, the pandemic has not treated everybody equally. Hundreds of thousands have lost their jobs, spent their savings and face an uncertain future. The burden has fallen particularly heavily on the young, who are most likely to be those working in the hospitality and leisure industries. By contrast others have done relatively well. In the UK, there are reports of as many as 9 million 'unexpected savers' who have faced a combination of either working from home or having their incomes supplemented by furlough schemes, and at the same time have been unable to spend anything on entertainments. Certainly, unlike other recessions, there is no 'systemic weakness' in the economy. Strangely, 2020 has seen not only record debts, but also record levels of personal savings.

Thus, while currency of all gambling – leisure spend – has been significantly reduced, in many cases it is a question of fun postponed rather than removed altogether. In the UK, the beginning of the pandemic came serious warnings from regulators asking operators to ensure that their customers, often bored, solitary and impoverished by loss of employment, did not succumb to excess gambling. So what happened? The latest statistics from the UK Gambling Commission (January to November 2020) showed no significant increase in gambling, despite the stories peddled by the media. There was, as might be expected, a continued growth in online gambling, and equivalent decline in the use of retail premises for bookmaking. But these trends are probably what one would have expected whether there was a pandemic or not. It is curious how constant gambling behaviour is in our society.

All of us have had our views changed over the past 12 months, and all of us have tried to maintain a sense of normality in unusual circumstances. It will be very interesting to see

how our society changes as a result. But in the meantime, our group of author-lawyers have at least been able to keep busy working to serve our clients, and monitor developments in this fascinating and evolving area of law.

I wish to thank my contributors for their usual careful and detailed analysis of the gambling laws of their individual jurisdictions. *The Gambling Law Review* now contains 33 chapters, and I hope that next year's guide will cover still more. I also add a note of personal thanks to those in my own domestic and work bubble, my partner Vanessa and my son Louis, who have both had to put up with more of me in the last 12 months than anyone rightly should have to suffer, and to whom therefore I dedicate my own part in this year's edition.

**Carl Rohsler**

Memery Crystal

London

May 2021

# IRELAND

*Alan Heuston*<sup>1</sup>

## 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

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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 VII 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 VII 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. Tote Ireland’s current licence is due to expire in 2021. Bord na gCon (the national greyhound board) is licensed to operate a totalisator at greyhound tracks.

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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’.



### ***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***

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

### ***Betting on lotteries***

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

## **ii Gambling policy**

Although gambling has a long history in Ireland, the Irish authorities have recognised that the legislation governing gambling requires modernisation.<sup>7</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.

There is a political desire to modernise Irish gambling law. On 15 July 2013, the government published the heads of the Gambling Control Bill 2013 (the Scheme), which, if enacted, would have modernised Ireland’s legislative framework for all types of online and land-based gambling. However, in early 2018, media reports indicated that there were plans

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

to scrap the Scheme and prepare and publish a new, updated Scheme, on the basis that the original Scheme is now considered outdated and no longer fit for purpose. In addition to the Gaming and Lotteries (Amendment) Act 2019 outlined above, which commenced on 1 December 2020, the Department of Justice and Equality in its recent Action Plan for 2021 stated that a General Scheme of legislation to reform the licensing regime for gambling and establishment of the gambling regulator in Ireland would be established in the third quarter of 2021. See Section VIII for further information.

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

### **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>8</sup> It is clear from the list of operators who have obtained the necessary licences<sup>9</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 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.

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8 Betting Act 1931 Sections 1 and 7C.

9 Available from the website of the Irish Revenue Commissioners.

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 2021 and 2022 (see Section VIII).

### ii The regulator

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

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

Similarly, in December 2020, the Minister of State with responsibility for Law Reform at the Department of Justice and Equality, James Browne TD, stated that the government plans to create a gambling regulator by the summer of 2021 and will initially cover the cost of setting it up before arranging for it to be funded by the industry. The Department of Justice and Equality's Action Plan for 2021 stated that in the first quarter of 2021, a formal programme to establish a statutory gambling regulator, using a project management approach and cross-functional programme team, would be established, following which a General Scheme of legislation to reform the licensing regime for gambling and establishment of the gambling regulator in Ireland would be established in the third quarter of 2021,

followed by finalisation of the responsibilities for the director/CEO designate of the regulator and the public advertisement of the position and finalisation of the appointment of director/CEO designate.

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

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

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>10</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 VII, below, for details of the reform that recently took place in this respect.

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10 [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).

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

The Betting Acts envisage the business of bookmaking being carried out in registered bookmaker's premises.<sup>11</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 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>12</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. As stated in Section I, Tote Ireland's current licence is due to expire in 2021. Bord na gCon is licensed to operate a totalisator at greyhound tracks.

#### **v Remote gambling**

Remote betting and the provision of remote betting intermediary services are generally permitted in Ireland, meaning that an operator that is licensed by the Irish Revenue Commissioners in Ireland may provide betting services to Irish citizens in Ireland by remote means<sup>13</sup> using equipment which may be located in Ireland or abroad.

As stated in Section I.v, 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 Scheme is enacted (see Section VIII).

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

12 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'.

13 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)'.

## vii Financial payment mechanisms

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

## III THE LICENSING PROCESS

### i Applications

#### *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>14</sup>

Under the 2015 Act, a licence can now be taken out by a body corporate as well as an individual.<sup>15</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>16</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>17</sup> Applications for COPFs from terrestrial bookmakers ordinarily resident in the state must be made to a superintendent of the Irish police.<sup>18</sup> The superintendent or Minister for Justice has up to 56 days to either grant or refuse an application.<sup>19</sup>

Once COPFs have been obtained, the operator has a 21-day window within which their licence application form must be submitted to the Irish Revenue Commissioners. The fully completed application form must be accompanied by the COPE, a valid tax clearance certificate and payment of the licence duty.<sup>20</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>21</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

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14 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).

15 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).

16 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.

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

18 *ibid.*

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

20 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).

21 *ibid.*

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>22</sup> The licence may be paid in full at the time of application or renewal or in two equal instalments.<sup>23</sup>

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

The standard duration of a licence is two years.<sup>24</sup> Bookmakers' licences will expire on 30 November of every second year.<sup>25</sup> Remote bookmakers' licences and remote betting intermediaries' licences will expire on 30 June of every second year.<sup>26</sup> The requirements and processes that apply to the first licence application also apply to applications for licence renewal.<sup>27</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

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22 *ibid.* footnote 23.

23 *ibid.* footnote 23.

24 *ibid.*, footnote 23.

25 *ibid.*, footnote 23.

26 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).

27 *ibid.*

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 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>28</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>29</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>30</sup>

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28 Betting Act 1931 Section 2(1).

29 Betting Act 1931 Section 2(6).

30 Betting Act 1931 Section 2(7).



It is an offence to represent oneself as a bookmaker, a remote bookmaker or as a remote betting intermediary without a licence.<sup>31</sup> The penalty for this offence is a class A fine on summary conviction or, on conviction on indictment, a maximum fine of €100,000.<sup>32</sup> Where a further offence is committed, conviction on indictment carries a maximum fine of €250,000.<sup>33</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>34</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>35</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>36</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>37</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>38</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.

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31 Betting Act 1931 Section 2A(1).

32 Betting Act 1931 Section 2A(2).

33 Betting Act 1931 Section 2A(3).

34 Betting Act 1931 Section 32B(1).

35 Betting Act 1931 Section 32B(10).

36 Betting Act 1931 Section 23(1).

37 Betting Act 1931 Section 23(3).

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

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, and the rules contained in AMLD5 have not yet been implemented in full in Ireland. However, the Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Bill 2020 was recently signed into law in Ireland to give effect to certain parts of AMLD5, amending 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 urges Member States to stick to their commitment to introduce these tightened measures as early as possible. The proposal was presented by the Commission in July 2016 in the wake of terrorist attacks and the revelations of the Panama Papers scandal, and is part of the Commission's Action Plan of February 2016 to strengthen the fight against terrorist financing. It sets out a series of measures to better counter the financing of terrorism and to ensure increased transparency of financial transactions.

The 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 gambling entities. It appears that Section 16 of AMLD5 will amend Article 47 of the AMLD4 to require Member States to take steps to ensure that gambling service providers who offer virtual currencies as means of payment are regulated.

The Sixth Anti-Money Laundering Directive (AMLD6) was published in the Official Journal of the European Union on 12 November 2018 and complements the existing directives on anti-money laundering. 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, particularly once AMLD5 is given its legislative basis here.

## **V TAXATION**

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

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

Unlike most other European jurisdictions, gaming services are not specifically exempted from VAT in Ireland. As a result, online providers who are licensed overseas but who are providing e-gaming services to Irish customers should be registered and charging Irish VAT at 23 per cent on play from Irish customers. Generally speaking, the amount on which VAT is charged is the consideration actually received by the operator from Irish customers. For

non-pooled gaming (e.g., slots, casino), this will typically be the net revenue (i.e., after free bets or plays) that the operator receives. For pooled gaming (e.g., poker), the consideration that will be subject to VAT is the rate that the e-gaming operator receives, which is applicable to Irish customers.

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

## VI ADVERTISING AND MARKETING

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

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

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

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

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

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

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

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

A revised version of the Code that governs commercial communications such as advertising, sponsorship and product placement on Irish licensed television and radio stations, which took effect from 1 June 2017, includes enhanced provisions, such as prohibitions on

advertising of remote bookmaking operations without a remote bookmaker's licence, and certain portrayals of gambling (e.g., children gambling or that gambling can be a solution to personal or professional problems, or financial concerns).

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

### **i Risk-free bet**

In 2016, the ASAI considered an email sent by a bookmaker advertising a risk-free bet<sup>39</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.

### **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>40</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>41</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

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

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

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

Committee must be amended or withdrawn by organisations who agree to abide by the Code. In addition, decisions of the ASAI may be taken into account when applicable advertising or consumer protection legislation is being considered. For example, an advertisement that breaches the ASAI Code could, in certain circumstances, also be deemed to constitute a 'misleading commercial practice' for the purpose of the Consumer Protection Act 2007 and give rise to civil and criminal liability.

## **VII THE YEAR IN REVIEW**

Perhaps the most reported development in 2020 was the commencement of the Gaming and Lotteries (Amendment) Act 2019, which sought to address certain deficiencies with regard to the conduct of gaming and lottery activities regulated under the Gaming and Lotteries Acts. The main purpose of the Gaming and Lotteries (Amendment) Act 2019 was to: (1) streamline and modernise the application process for gaming permits and lottery permits and licences for smaller scale, local gaming and lottery activity; (2) protect underage people by standardising the minimum age for all licensed gambling at 18 years of age, including for betting on the Tote; (3) ensure more proceeds from lotteries go to charitable causes; (4) update the stake and prize limits for licensed gaming machines, with a provision for the amendment of these amounts by regulation; and (5) to serve an important public interest in assisting the better promotion of gaming and lotteries and to enhance consumer protection.

In respect of gaming, gaming permits are now 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 be issued 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.

In respect of lotteries, certain lotteries that are held for charitable or philanthropic purposes do not require any form of permit or licence, provided that certain conditions are met, and similarly certain lotteries that are held in conjunction with the promotion of a particular product do not require any form of permit or licence, again provided that certain conditions are met.

For lotteries in respect of which 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, such 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.

For lotteries in respect of which 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; and (6) the allocation of the proceeds referred to above must be made within one month of the date of the holding of the lottery.

## VIII OUTLOOK

The Minister for Justice announced plans in 2011 for new legislation on gambling in Ireland. In presenting his plans, the Minister noted that ‘the present laws are not adequate to deal even with aspects of gambling which they were intended to cover’.<sup>42</sup>

The heads of the Scheme were published on 15 July 2013.<sup>43</sup> The intent of the Scheme was that it would, if enacted, provide a comprehensive overhaul of Ireland’s outdated gambling laws and would result in most forms of gambling being regulated by a single piece of legislation.

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

On 10 January 2018, it was widely reported in the media that the government would scrap the Scheme in favour of drafting and publishing an updated Scheme, on the basis that the original Scheme is, on reflection, outdated and no longer fit for purpose. It is anticipated that the revised Scheme will now tackle new developments in the industry, such as social media advertising, cryptocurrencies and secondary lottery providers.

Recent media reports suggest that the long-awaited Irish gambling regulator will be established by the summer of 2021, with additional gambling legislation to follow. The Minister of State with responsibility for Law Reform at the Department of Justice and Equality, James Browne TD, stated in December 2020 that the Irish government plans to create a gambling regulator by the summer of 2021 and will initially cover the cost of setting

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42 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).

43 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).

it up before arranging for it to be funded by the industry. The government is expecting to commit between €8 million and €12 million to the project ‘in the first few years’. The minister stated that the Government wants to ‘give [the regulator] lots of flexibility’.

The Department of Justice and Equality in its recent Action Plan for 2021 stated that a General Scheme of legislation to reform the licensing regime for gambling and establishment of the gambling regulator in Ireland would be established in the third quarter of 2021.

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

#### **i Independent regulatory authority**

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

It is reasonable to suggest that the new body will assume most of the functions that were expected to be carried out by the OGCI and in this event, the new independent regulator will probably grant licences to promoters who will incur a licensing fee that will go towards funding the independent regulator. Similarly, just as the OGCI was to be the ultimate enforcer of gambling laws in this jurisdiction, it is likely that the independent regulator will also be equipped with similar powers to fulfil this role (e.g., the power to order ISP blocking measures to prevent, disrupt or obstruct access to unlicensed remote services).

#### **ii Online gambling and social media advertising**

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

#### **iii Licensing system**

It is anticipated that the revised Scheme will update the licensing system in Ireland. Following publication of the original scheme, several submissions were made to the Department of Justice and Equality in relation to the complex licensing system envisaged by the original Scheme. The majority of these submissions sought a more streamlined licensing system. Of particular interest will be whether the revised Scheme will reduce the number of licences proposed in the original Scheme (43 different licences in total), with a view to minimising the potential administrative backlog and simplifying the system for promoters who may find it unduly difficult to determine what licence to apply for.

#### **iv Additional issues**

Other issues that are reported to be included in the revised Scheme are the regulation of gaming machines, the regulation of casinos, restrictions on financial payment mechanisms and the protection of children against gambling. Legislation for land-based casinos and

casino games were provided for in the original Scheme, in addition to provisions to allow for gaming in betting shops and enhanced player protection measures. No specific mention has been made of these provisions in relation to the revised Scheme.

**v Timing**

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.



## 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.

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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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