

IRELAND



Trends and Developments

Contributed by:

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A&L Goodbody LLP and its betting, gaming and licensing group is a leading specialist on Irish gambling regulation and licensing laws. It provides commercial and practical legal advice to national and international businesses – specifically leading national and international bookmakers, banks/financial institutions, casinos, betting exchanges, lottery operators, technology companies, media service providers, and suppliers of software and gaming equipment. The firm advises on not just the essentials of licensing and gambling law, but also on regu-

latory aspects and how best to engage with regulatory authorities and the courts. Its strong relationships with police and regulatory authorities help the firm to provide informed, quality advice as to what is and is not achievable in the Irish regulatory context. The firm's lawyers are members of the International Masters of Gaming Law and the International Association of Gaming Advisors, and they regularly speak and publish on issues of topical interest to a domestic and international audience.

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Joe Kelly is the head of A&L Goodbody LLP's gaming and betting group, which advises a wide cross-section of online and land-based gaming operators, tech companies, casinos,

bookmakers, betting exchanges, financial institutions, betting shops, lotteries, fantasy sports providers, amusement arcades, and the suppliers of equipment and services (including financial services) to the gaming industry. Joe has organised and spoken at numerous Irish and international conferences on the reform of Ireland's gaming, lotteries and betting laws. He has played a leading role as an advocate on behalf of clients regarding the development of a proper regulatory framework for the gambling industry in Ireland, as an essential precondition to attracting significant inward investment into Ireland in this sector. Joe is a member of the International Masters of Gaming Law (IMGL) and the International Association of Gaming Advisors (IAGA).



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The logo for A&L Goodbody, featuring the company name in a teal, sans-serif font.

Irish Regulatory Reform: the Final Furlong

After almost 15 years and a number of stop-start attempts, Ireland is finally on the cusp of significant regulatory reform of its largely antiquated gambling laws. It has been a long journey to get to this point, but legislation to overhaul regulation of the gambling sector is at an advanced stage. Work is also well underway to establish an independent regulator, the Gambling Regulatory Authority of Ireland (GRAI).

While outline draft legislation had previously been tabled as far back as 2013, in the form of the “General Scheme of the Gambling Control Bill”, it was not until December 2022 that a full parliamentary bill was unveiled to regulate the sector. The publication of the Gambling Regulation Bill, in parallel with the appointment of a “CEO Designate” to the GRAI, have provided the clearest evidence of a commitment by the Irish government to completing the long-promised reforms.

There is no doubt that this is a comprehensive reform when measured against Ireland’s existing gambling laws, which go back decades. Underpinned by principles of ensuring consumer safety and player well-being, the new legislation provides for the licensing and regulation of all forms of gambling, with the exception of the Irish National Lottery which is regulated by separate legislation. The establishment of an independent regulator with robust compliance, supervisory and enforcement powers is a new departure in itself.

The challenge – and indeed the opportunity – facing Ireland is no different to that faced in other jurisdictions which have already been down the reform road: to strike an appropriate (and effective) balance in protecting consumers, while avoiding the over-regulation of a key segment

of the entertainment industry, which makes a significant contribution to the Irish economy. In a small jurisdiction such as Ireland, a key risk of over-regulation is making it an unattractive jurisdiction for established and reputable operators in which to get licensed. Getting the balance wrong, such that customers are not effectively channelled to the regulated sector, will result in driving them to unregulated operators.

As we approach what is hopefully the final furlong of Ireland’s reform efforts, this article briefly examines what lies ahead for gambling operators (and others) providing services to Irish customers, measuring this against the approach taken in other jurisdictions – in particular the UK, as Ireland’s nearest neighbour and cultural bedfellow.

The Long Journey Towards Reform

Irish law on gambling is primarily contained in legislation dating back to 1931 (for betting) and 1956 (for gaming and lotteries). Although both statutes have been amended in more recent years – including the introduction of a system of licensing for remote bookmakers and remote betting intermediaries in 2015 – it has long been accepted that Irish gambling law is considerably out of date.

Following the 2010 publication of an “Options Paper” on potential approaches to legislative reform, draft legislation to comprehensively reform the sector was put forward in 2013 in the form of a “General Scheme of the Gambling Control Bill”.

This outline legislation set out proposals to repeal and replace existing law and to comprehensively regulate betting, gaming and lotteries (including bingo). However, the General Scheme languished, and instead the focus turned to the

introduction of a licensing regime for remote bookmakers and remote betting intermediations in 2015. By and large, this 2015 legislation has succeeded in creating an effective licensing system for online betting. This is demonstrated by the good level of uptake of remote licences, with 67 remote bookmaker's licences having been issued in 2023 (more than double the 32 awarded in the first licensing cycle in 2015).

Following the establishment of the new regulatory regime for online betting, another government inter-departmental report was commissioned in 2019 on the future of licensing and the regulation of gambling. This report acknowledged the economic significance of the gambling industry, but also recognised that the approach to the regulation of gambling activities required updating, in particular to reflect the move towards digital and online formats.

There is no doubt that the 2019 report marked a real gear shift in the journey towards reform. By October 2021, the government had published a "General Scheme" for the Gambling Regulation Bill (the "Bill"), which after much anticipation commenced its journey through the Irish legislative process in December 2022.

A Comprehensive New Licensing Regime

Although a number of its provisions have been subject to criticism, there is no doubt that the Bill is a comprehensive reform measure. When enacted, it will substantially overhaul the current regulatory framework, requiring all providers offering gambling services to Irish customers (including betting, gaming and lotteries) to hold an Irish licence issued by the GRAI. In particular, the Bill proposes the introduction of:

- B2C gambling licences for in-person and online gaming, betting and commercial lotter-

ies (except for the National Lottery, which is separately regulated and subject to the granting of an exclusive licence);

- B2B licences for persons selling or supplying gambling products or services to the holder of an Irish licence or to other persons outside Ireland; and
- separate gambling licences for charitable or philanthropic organisations (including sports clubs, community organisations and charities).

Presently, the licensing process requires applicants for online betting licences to identify relevant officers who must apply for both tax clearance and police clearance (or, in the case of relevant officers residing outside the jurisdiction, for a certificate of personal fitness issued by the Department of Justice). The applicant company must also ensure that it has valid tax clearance.

The proposed application process under the Bill largely mirrors the current process in terms of the required proofs mentioned above. However, applicants will further be required to provide more detailed information alongside these proofs, including:

- a business plan;
- details of any relevant pending proceedings against the relevant officers; and
- such other supporting documentation as the GRAI may stipulate.

The planned introduction of B2C licensing for all gambling operators offering their services to Irish customers was fully expected. However, the breadth of the proposed B2B licensing requirement has attracted significant criticism and has been the subject of some comment during the legislative process. While an amendment to the text of the Bill has clarified that a B2B licence

holder is not required to be located in Ireland, it remains the case that all service providers, whether located inside or outside Ireland, who wish to supply gambling products and services to a person in Ireland will require an Irish B2B licence. It is also the case that any service provider located within the State will also require a B2B licence in order to provide gambling products and services to any person located outside the State, or to the National Lottery.

Player Safety Measures

At the heart of the proposed reform is a determined effort to ensure player safety, improve consumer protection and effectively tackle problem gambling. It is therefore no surprise that the Bill also provides for the establishment of a Social Impact Fund and a National Gambling Exclusion Register. The Register, in particular, will assist players in managing their personal behaviour if it is veering towards addiction. In addition, the Bill proposes to introduce a ban on the use of credit cards when engaging in gambling activity.

None of these proposals has been controversial, and indeed the sector has already taken some of these measures voluntarily.

Restrictions on Advertising, Sponsorship and Promotions

The Bill's provisions relating to advertising and promotions have sparked the most debate, with the following being the most noteworthy.

The watershed hours

The Bill proposes a statutory watershed prohibiting the broadcasting of gambling advertising on TV, radio and "on-demand audio-visual media services" (ODAVMS) between the hours of 5.30am and 9pm. This obligation appears to extend to licensees, intermediaries and service providers.

The GRAI will also have broad powers to prescribe the times, places and events where gambling advertising can be broadcast, displayed or published (including as regards frequency and volume). Repeated concerns have been expressed by broadcasters about the impact of restrictions on gambling advertising if this watershed is enacted into law. The Minister of State for the Department of Justice, Minister James Browne TD, has clarified that the legislation is not intended to adversely impact on the broadcasting of horse racing. However, it remains to be seen how on-course advertising will be managed in that context.

Advertising platforms

For gambling advertising on ODAVMS and "other electronic means of communication" (which includes social media), the Bill provides that it will be necessary to demonstrate that the recipient of the advertising has subscribed to such services, and has given their "explicit consent" to receive such advertising.

This is not an outright prohibition, but seems intended to prohibit advertising "by default". Based on the current draft of the Bill, the obligation to obtain "explicit consent" appears to sit both with the advertiser and with the electronic communications service provider.

Also, a "blocking facility" must be made available, whereby a recipient of an advert can elect to prevent the future receipt of a particular gambling advert, as well as other similar adverts. This has drawn sustained criticism from ODAVMS providers, because it appears to envisage a duty to monitor being imposed on them, and that would be at odds with provisions in the Digital Services Act.

Banning “inducements”

Controversially, the Bill proposes to ban the offering of “inducements” to participate in gambling. While the General Scheme of the Gambling Regulation Bill included more detail on what might constitute an inducement, the term is not currently defined in the Bill. Under the General Scheme, inducements include offers to advance credits or tokens to place bets, better odds or offers of free gifts. Hence, it is reasonable to assume that the provision is intended to capture “free bets” or other promotional offers. In recent times, there has been some adverse media commentary about the role played by free adverts in “luring” people into gambling.

Conversely, there is apprehension that the scope of the current wording of this provision is quite expansive. Outlawing free bets, which is quite a common marketing device in the industry, would deal a significant blow to the channelisation of players towards the regulated sector. In other jurisdictions, such as Germany, reports suggest that the prohibition on inducements, including bonus bets, has encouraged a growth in off-shore, illegal operators. Unlike regulated operators, unlawful operators will have a significant advantage in being able to target potential players via promotional offers on social media.

GRAI regulations and guidance

For promotions more generally, the GRAI will be able to make regulations which limit or prohibit certain types of promotions that directly or indirectly encourage people to gamble. Commentators have called out the need to define “inducement”, but not so narrowly that it completely precludes regulated operators from attracting players. It is also to be hoped that the GRAI will issue guidance on this topic, such that operators will have more clarity on what offers they can or cannot make to prospective players.

A New and Independent Regulator

A key feature of the proposed reforms is the establishment of the GRAI, and notably, steps have already been taken to fund the GRAI in parallel with the legislation being developed.

Once the Bill is enacted and enters into force, the GRAI will have comprehensive powers to regulate all aspects of the gambling sector in Ireland (with the exception of the National Lottery). Alongside its licensing powers, it will also have significant powers to introduce regulations, codes of practice, and guidance setting out specific requirements to bolster the requirements in the Bill. Its enforcement powers will include the following:

- to investigate contraventions of the law;
- to suspend or revoke relevant licences;
- to apply to court for an order compelling internet service providers to block access to an online provider;
- to stop payments to licensees; and
- to impose administrative financial sanctions of up to EUR20 million, or 10% of the turnover of the licence holder in the year preceding the date of the imposition of the penalty.

How Do the Proposed Reforms Measure Up Against Other Jurisdictions?

A notable feature of the 2019 inter-departmental report was its examination of the approaches to licensing and the regulation of gambling in a number of other jurisdictions, including Italy, Sweden, Malta, Denmark and the UK.

In particular, there were some clear similarities identified between the GRAI’s proposed powers and modus operandi and those of the UK Gambling Commission (UKGC). What remains to be seen, however, is the extent to which Ireland’s planned new laws will reflect the addition-

al player protection measures identified in the Department for Culture, Media and Sport's white paper for reform, entitled *High Stakes: Gambling Reform for the Digital Age* (the "White Paper") published in April 2023.

While the conclusions of the White Paper were drawn from an assessment of the UK market, the similarities between the UK and Irish markets make the White Paper a useful lens through which to assess the provisions in the Bill, as follows.

Limits on stakes

The White Paper recommends a stake limit of between GBP2 and GBP15 for online slot games, bringing them more in line with the land-based sector. Under the Bill, Ireland could be subject to similar restrictions as the Bill imposes a maximum stake and prize limits for relevant games and lotteries (but not commercial betting products). These proposed maximum stakes are currently set at a maximum of EUR10 payments for relevant games and lotteries, with limits on payouts of:

- EUR3,000 for relevant games;
- EUR5,000 per week for periodical lotteries; and
- EUR360,000 for one-off lotteries.

Statutory levy

The White Paper recommends the introduction of a statutory levy paid by operators in scope, directly to the UKGC, to fund research, education and treatment of gambling harms. Likewise, the Bill includes provisions for the establishment of a Social Impact Fund, which will be funded by an annual contribution from licence holders.

Sponsorship of sporting events or teams

The White Paper recommends that there be a strengthening of informational messaging regarding the risks associated with gambling. With this in mind, the Premier League has agreed to voluntarily end front-of-shirt sponsorship by gambling companies. The Bill does include a similar prohibition on the sponsorship by licence holders of any events which are predominantly targeted or aimed at children. It is also worth noting that the GAA has voluntarily agreed to not accept any sponsorship from gambling companies.

Free bets/inducements

The White Paper recommends that incentives such as bonuses and free bets be constructed in a socially responsible manner that does not exacerbate the risk of harm. The Bill as currently drafted adopts a more restrictive approach, providing for a broad prohibition on inducements to a person to:

- participate in gambling; or
- continue to participate in gambling.

While the parameters of what is meant by an "inducement" are yet to be precisely determined, it is certain that this is intended to include free bets. Whether it is as expansive as including other forms of inducements is yet to be determined.

Complaints

The White Paper proposes a new ombudsman to deal with disputes and to provide appropriate redress where a customer suffers losses due to operators' social responsibility failure. Notably, the Bill sets out powers for the GRAI to receive complaints and to investigate those complaints concerning licensees.

Other measures contemplated by the White Paper, but not specifically addressed under the current draft of the Bill, include the following.

- More prescriptive rules on when online operators must check customers' financial circumstances or indicators that their losses are harmful.
- Making online games safer by design, by reviewing game speeds and removing features which exacerbate risks.
- Subject to trialling outcomes, proposals on making data-sharing mandatory between online operators regarding high-risk customers, for collaborative harm prevention.
- Improvement to player-centric tools. For instance, the UK Gambling Commission will consult on increasing the uptake of these tools, including whether it is appropriate to make online deposit limits mandatory or "opt-out" (rather than "opt-in").

The White Paper notes that while operators are currently required to identify customers at risk of harm, and to take action, these interventions often happen too late or, in some cases, not at all. In response, the White Paper recommends undertaking background checks at moderate levels of spending, to check for financial vulnerability indicators. It has been proposed that these checks should take place at the level of GBP125 net loss within a month, or GBP500 within a year. Notably, the Bill has not ventured into this area, but it seems likely that the GRAI will engage on this issue when it is fully up and running.

English Court Proceedings

The recommendations in the White Paper regarding financial vulnerability indicators follow the issue of proceedings in the English High Court against a gambling operator. An action brought by a problem gambler alleged

that the operator failed to carry out sufficient source-of-funds checks, or failed to intervene in the customer's gambling in breach of its AML requirements under its licence. The operator has denied any breach of its contractual terms with the customer or a breach of its licensing conditions. While the proceedings are ongoing and an outcome is not yet clear, this may well be an indication of the types of claims that may come before the Irish courts should the Bill (or later the GRAI) introduce more stringent obligations in respect of affordability checks for operators in the Irish market.

It is conceivable that the duty of care in tort will be tested before the Irish courts, given that Irish gamblers have already threatened litigation against operators, though it is unclear how sustainable such threats may be in terms of articulating a viable cause of action.

The Final Furlong?

There is no doubt that the publication of the Bill last December marked a pivotal point in the move towards Ireland becoming a fully licensed and regulated jurisdiction for gambling operators. As the GRAI prepares to take on the role of a dedicated gambling regulator, it is hoped that the progression of the Bill towards enactment will not be stalled for too much longer, given the urgency of the reforms.

This has most recently been illustrated by the publication of a report by Ireland's Economic & Social Research Institute (ESRI) in October 2023. This ESRI report provides an insight into the patterns of consumption for gambling products by Irish consumers, with some indications that the level of problem gambling in Ireland is greater than what was previously understood to be the case.

The central finding is that 130,000 people could be considered problem gamblers, a figure ten times higher than previous estimates. The report forms part of a programme of research on gambling, which is being funded through the Department of Justice and the Implementation Team supporting the establishment of the GRAI.

The report seems likely to lend support for some of the more stringent measures currently proposed in the Bill, particularly regarding advertisements and inducements. Insights gleaned from other jurisdictions suggest that adopting too hard-line an approach to addressing problem gambling could have the unforeseen consequences of creating an unworkable legislative regime.

In Germany, strict regulations on deposit limits and maximum stakes have had the unintended consequence of increasing the popularity of illegal gambling. It has been suggested by operators in the German market that an 80% drop in customer deposits was attributable to a rise in illegal gambling, following the implementation of Germany's State Treaty on Gambling.

In Lithuania, it has been suggested that poorly worded legislation regarding a prohibition on inducements has created ambiguity for operators, again with detrimental consequences for the regulated market.

Since the Netherlands opted to ban gambling adverts in July 2023, the first report published by the gambling regulator there has shown a slowdown in the growth of the regulated gambling market. While it cannot be said for certain that this ban by the regulator has caused a slowdown in the market, the intervention by the Dutch authority appears to have played some role in this.

Overall, it is key that both the Bill and the regulatory approach to be adopted by the GRAI in the exercise of its powers strike an appropriate balance between consumer protection and preserving an industry which is of significant cultural and economic importance in Ireland.

In particular, the channelisation of gambling players to the regulated gambling market should be a key objective – if the reform law is too strict, there is a manifest risk that players will opt for the illegal market instead. One way or another, the final shape of the reform legislation should reveal itself in early 2024, when it is scheduled to be enacted into law.