

Progress on Irish gambling law reform ramping up

Minister of State in the Department of Justice, James Browne, updated the cabinet this week on progress on the reform of Ireland's gambling laws to include the establishment of a gambling regulator.

The update followed the recent publication of the "Justice Plan 2021" and "Statement of Strategy 2021-2023" which announced an indicative timeline for planned reforms of Irish gambling law.

In a press release issued by the Department of Justice on 24 March, 2021, Minister Browne said that "good progress has been made on driving this long sought reform on gambling regulation..." and expressed his determination to "...deliver on this important legislative and regulatory modernization programme".

What is described by the Minister as a 'Programme Board' has been established in the Department of Justice to oversee the updating of the General Scheme for the legislation that will underpin the future licensing and regulation of gambling. This reinforces comments made by Minister Browne in a recent interview with "The Currency",¹ which discussed the likely scope and expected timing of the new legislation and the putting in place of a new regulator before the end of 2021.

A "culture of limits"

In The Currency article, the Minister has emphasised that regulation of the gambling industry "will need to balance the needs of the businesses and the social implications of problem gambling." Minister Browne has proposed to address this issue by developing "a culture of limits", noting the careful balancing act which needs to be achieved between protecting players, while at the same time not encroaching inappropriately on certain constitutional freedoms.

In striving to achieve this balance, Minister Browne outlined some of the potential public health and consumer protection focused measures which are under consideration:

- i. **A ban on credit card gambling:** Introducing a ban on credit card gambling or gambling using credit more generally.
- ii. **Self-exclusion:** Creating an "opt-out" mechanism whereby an individual who suffers from a gambling addiction may go to the regulator, and the regulator can ask operators to block this individual from gambling on identified websites.
- iii. **Age and customer verification:** Requiring proper age and customer verification procedures to be put in place. The Minister emphasised the need to put an end to gambling targeted at minors and the normalization of gambling amongst young people, particularly through apps on smart phones.
- iv. **Gambling advertising:** Regulating gambling advertising targeted at minors. The Minister has said that he wants to prevent "encouragement". He made particular comments on how operators offer better odds and free spins in an attempt to lure individuals back into gambling.
- v. **VIP programmes:** Removing VIP sections on gambling websites.

** <https://thecurrency.news/articles/38093/since-i-started-tackling-the-issue-of-gambling-my-facebook-feed-is-full-of-gambling-ads-from-different-gambling-organisations/>

- vi. **Risk profiling:** Treating every customer the same in terms of risk profiling. Currently operators adjust the risk profile of customers depending on a number of factors.
- vii. **Gambling and sport:** Restricting gambling operators sponsoring sport and teams. The Minister remarked that practices such as the naming of gambling operators on jerseys have a particular influence on young people and this is something that he wants to address.
- viii. **Gambling and social media:** Redefining the demarcation between paid for advertising and the honest endorsement of products.
- ix. **Social Fund:** The establishment of a Social Fund to address issues of addiction.
- x. **Consumer rights:** The regulation of the gambling industry will ensure that consumers will have rights against companies who might be based outside of Ireland, and such operators will be answerable to the Irish regulator.

Timing of new legislation

Minister Browne is targeting some definite milestones in 2021, including the publication of the General Scheme of the Gambling Control Bill in Q3. The Minister intends that the newly established Programme Board will ensure that the different work streams are being progressed in parallel.

The aim of this is “to minimise the time between the enactment of the legislation and the date on which the regulator commences operations.” However, the Minister has acknowledged that it will likely be early 2023 before that new legislation is passed into law.

Minister Browne has also noted that once the regulator is established, that regulator will be the driving force behind the legislation required to propel and implement the new reforms.

Office of the regulator for the gambling industry

The Department of Justice is aiming to appoint the new gambling regulator before the end of 2021. However, it is likely that the regulator’s office will not become fully operational for some time, with Minister Browne commenting at the briefing that “there is a clear path towards the gambling regulator being operational in early 2023.”

The new regulator will have three key objectives, stated in the following order in the Department of Justice press release.

- Preventing gambling from being a source of finance or support to crime;
- Ensuring that gambling is conducted in a fair and open way; and
- Requiring the promotion of safe and responsible gambling and combatting problem gambling.

In his recent interview, Minister Browne provided some additional context to what the regulator’s office might look like. In terms of resourcing, he has indicated that between 80 and 100 staff are likely to be hired. The Minister said that the number of staff will reflect the scale of the industry, and the fact that all operators – domestic and international – will require an Irish gambling licence to offer gambling services to players in Ireland. Alongside licensing, the regulator is also likely to be responsible for monitoring compliance with money-laundering legislation and regulating gambling advertising and gambling apps.

The regulator’s office is intended to be self-financing, though it is acknowledged that it may not be immediately so. Discussions are to take place over the amount to be charged in licensing fees as this will be one of the sources of financing for the regulator. It is also envisaged that fines imposed by the regulator on operators who do not comply with the legislation, will similarly assist in financing the costs of the regulator’s office. It remains to be seen how this will sit with the regulator’s enforcement functions.

New categories of licenses

As regards the reformed licensing regime, the Minister is on record as saying that the new licensing regime will have different categories of bookmakers licenses including:

- Business-to-business;
- Business-to-customer; and
- Customer-to-customer (for example, for betting exchange operators).

Keeping pace with industry developments

Interestingly, it is also envisaged that the Minister will have the power to draft regulations and that provision will be made for this in the new act. Therefore, as issues arise and changes occur in the industry, the regulator will be able to feed this back to the Minister and the Minister will in turn draft regulations to address such issues on an ongoing basis.

There is clearly a recognition that the gambling industry is constantly evolving and that a “constant feedback loop” between the regulator and the Minister responsible under the newly enacted legislation, will be required to ensure that the newly established regulatory and licensing regime continues to be fit for purpose.

The scale of the task

At the briefing, Minister Browne reiterated the importance of the regulator and its remit;

“Given the size, complexity and technological development of the modern gambling industry and having regard to the current outdated and complex arrangements, it is important that the regulator will be established on a strong footing and adequately resourced to carry out this important task.”

Minister Browne has acknowledged the importance of the new gambling legislation and its potential to be one of the biggest pieces of legislation to be introduced in a decade with potentially up to 400 sections. In addition to that, he acknowledged the wisdom of allowing much of the detailed regulation to be delegated to the new regulator, such that primary legislation will not require an amendment each time a minor adjustment to the relevant law is required.

Further comments

The establishment of a gambling regulator and the reform of Irish gambling legislation is clearly to the fore of Minister Browne’s agenda. It is hoped that by the end of 2021, the office of the gambling regulator will be established and the General Scheme of the Gambling Control Bill will be published.

However, it appears that there are still a number of policy issues relating to gambling law reform that have yet to be discussed by government. It seems that a position has not yet been taken on whether limits will be set for betting machines in retail bookmakers, or on the status of loot boxes.

A much bigger issue is the striking of a balance between state intervention and securing public health on the one hand, versus individual constitutional rights on the other. It also appears that the Minister is alert to the challenge posed by the dependence of some sports on gambling revenue. Of key importance will be how the Minister attempts to resolve that challenge.

It is also significant that there appears to be a groundswell of support for a new regulatory framework. Recently a report funded by the Gambling Awareness Trust, which assists those with gambling problems, called for “the urgent establishment of a robust regulatory regime” for gambling in Ireland and the introduction of a levy and state funding to improve treatment and education in order to tackle gambling related harm.

Finally it is worth noting that the Minister is not claiming to have all the answers to the issues which this proposed reform is throwing up. Minister Browne has made it clear that he is very keen for stakeholders to make their views known, once the scheme for the new legislation, is published.

** Abo. Hendipid qui cum et pratas et rem et maximus magnam ra quia sedio comnim voluptat accabores idenecea ni ne et pliti renimolor ad mi, santotat vidus est ommoles vel eosantur

¹ At quis alitat prpropos estis dem simus eium volo modis velles maxim fugiati odit et untem remqui cor maximincias num nem ut pos de

Key contacts



Joe Kelly
Partner
+353 1 649 2429
jkelly@algoodbody.com



Katie O'Connor
Partner
+353 1 649 2591
koconnor@algoodbody.com



Máire Conneely
Senior Associate
+353 1 649 2477
mconneely@algoodbody.com



Jennifer O'Brien
Solicitor
+353 1 649 2890
jobrien@algoodbody.com

Disclaimer: A&L Goodbody 2021. The contents of this document are limited to general information and not detailed analysis of law or legal advice and are not intended to address specific legal queries arising in any particular set of circumstances.