

The details of Ireland's new Betting (Amendment) Act

The Irish President signed Ireland's Betting (Amendment) Act 2015 into law on 15 March. This Act introduces a licensing regime for remote bookmakers and betting intermediaries in Ireland, bringing both online and brick-and-mortar bookmakers onto a more level playing field. Joe Kelly, Maire Conneely and Rowena Caulfield of A&L Goodbody discuss in detail the principle features of the new Act.

On 15 March 2015 the Irish President signed into law the Betting (Amendment) Act 2015. The Act updates the existing provisions regulating retail bookmakers and introduces a licensing regime for remote bookmakers and betting intermediaries (betting exchanges). It is anticipated that the licensing provisions of the Act will commence almost immediately, with the exception of certain licence enforcement provisions, which will commence later in the year. This is intended to allow time for remote bookmakers and remote betting intermediaries to become licenced. It is also expected that the taxation provisions will commence later in the year.

Most notably, for the first time, remote betting operators, regardless of whether or not they have a physical presence in Ireland, will be required to obtain an Irish licence in respect of bets which they accept (or in the case of betting exchanges, facilitate) from Irish customers and pay tax on those betting transactions. In addition, the current holders of retail bookmakers licences (referred to in the Act simply as a 'bookmaker's licence') will be required, on the expiry of those licences, to apply for a new licence in accordance with the licensing application process detailed in the Act.

Principle features of the Act

Types of licence

The Act allows for two new types of licence:

1. A remote bookmaker's licence for operators offering remote betting to customers based in Ireland; and
2. A remote betting intermediary's licence for operators who facilitate Irish customers making bets (i.e. betting exchanges).

Under the new legislation, a bookmaker operating under a bookmaker's licence can accept bets placed remotely, provided the value of those bets in any one year does not exceed the lower threshold of: (i) EUR €250,000; or (ii) 10% of the bookmaker's turnover in that year.

Application process for a licence

It will now be possible for a corporate entity, as well as an individual, to apply for a licence. This is a welcome development for corporate entities, because it means that if there is a change in personnel in the middle of the licensing year, they will not have to change licence holder. The corporate entity applying for the licence should be the entity acting as the bookmaker/betting exchange operator for Irish customers.

The application process for the three types of licence is broadly similar and involves a two stage process:

1. Stage 1 requires the applicant (or where a corporate entity is applying for a licence, each 'relevant officer' of the corporate entity) to get a Certificate of Personal Fitness ('COPF') from either the Gardaí (for Irish resident applicants for bookmakers' licences) or the Minister for Justice (for applicants for bookmakers' licences who are resident outside of Ireland as well as all applicants for remote betting licences and remote betting intermediaries' licences).
2. Stage 2 involves an application to the Revenue Commissioners for the actual licence.

Applying for a Certificate of Personal Fitness

A 'relevant officer' is defined in the legislation as:

- (a) 'a person who exercises control (within the meaning of section 11 or 432 of the Taxes Consolidation Act 1997) in relation

to the body (for example, by means of the holding of shares or possession of voting power);

(b) a member (including the chairperson) of the body, or the board or the board of directors of the body, or any other person acting in such capacity, or

(c) the managing director or chief executive officer of the body, or any other person acting in such capacity?

It appears, on a literal reading of this definition, that only one of the above categories of persons needs to apply for a COPF, however further clarification is required on this from the Revenue Commissioners.

In advance of applying for a COPF the applicant must publish notice of the application in two Irish newspapers. This must be done at least 14 days and not more than one month before making the application. The form of that notice is to be specified by the Minister for Justice, which has yet to be clarified.

When applying for a COPF 'all such information (including information relating to the applicant's financial circumstances)' that the police/Minister for Justice 'may reasonably require,' must be provided. Further guidance in relation to what other information must be provided is awaited from the Revenue Commissioners.

Application to the Revenue Commissioners for a licence

Once the COPF is granted, it must be submitted to the Revenue Commissioners within 21 days. The validity of the COPF expires after 21 days. It should be submitted along with an application form, the excise duty (or the first instalment thereof) and in the case of a corporate entity, a list of the names of the relevant officers.

A particular noteworthy provision is that an offender can be prosecuted in absentia. Where a prosecution is brought and an operator fails to appear before the Irish court, the operator will be considered to have entered a plea of not guilty and can be prosecuted even though that offender has not presented at the court

The Revenue Commissioners will check that the applicant, and if applicable, each relevant officer of the applicant company, has a valid Tax Clearance Certificate before issuing the licence. Therefore, it would be prudent for all prospective applicants, who intend to apply for a licence, to ensure that they (and in the case of a corporate entity, each relevant officer of the corporate entity) hold a valid Tax Clearance Certificate. A Tax Clearance Certificate application form for a non-resident applicant can be obtained from the website of the Revenue Commissioners.

Offences relating to COPFs

Every corporate entity holding a licence must ensure that any newly appointed 'relevant officer' applies for a COPF within one month of his/her appointment. As well as this, a company that holds a licence must notify the Minister for Justice of any change in the name or address of any relevant officer of the company, no later than seven days after the change has occurred. A failure to comply with these obligations is an offence.

The holder of a COPF, or an applicant for a new COPF, is also obliged to notify the relevant authority of any offence that he (or any corporate entity of which he is a relevant officer), has been convicted of under certain legislation prescribed in the Act (which includes betting and gaming legislation and anti-money laundering legislation).

This obligation also extends to convictions imposed in another jurisdiction, if the act or omission that led to that conviction also constitutes an offence under the prescribed Irish legislation.

Duration of a licence

Bookmakers' licences will remain valid until 30 November of the

second year following the enactment of the legislation (i.e. 30 November 2017 assuming the legislation is commenced and a licence is granted in 2015).

Licences granted thereafter will remain valid for two years, expiring on 30 November every two years.

Remote betting licences and remote betting intermediaries' licences will remain valid until 30 June of the second year following the enactment of the legislation (i.e. 30 June 2017 assuming the legislation is commenced and a licence is granted in 2015). Licences granted thereafter will remain valid for two years, expiring on 30 June every two years.

Excise duty

The excise duty payable on the initial grant and renewal of a bookmaker's licence is EUR €500. Excise duty is also payable on the registration of a bookmaker's premises to the amount of EUR €760 (both on the initial registration and on the renewal of the registration).

The excise duty payable on granting a remote bookmaker's licence and a remote betting intermediary's licence is EUR €10,000, for each of the licences. It would appear that the duty payable on the renewal of remote licences is EUR €10,000, together with an additional amount linked to the level of annual turnover/level of annual commission earnings in the previous year. The wording of the legislation however is not entirely clear on this point.

A licensee can choose to pay the excise duty in full at the time that the licence is issued, or by way of two equal instalments.

Betting tax

The new legislation, and the related provisions in the Finance Act 2002 (as amended), extend the existing 1% turnover-based 'betting duty,'

which currently applies to bookmakers, to remote bookmakers. The betting duty for remote bookmakers is 1% of 'every bet entered into,' (i.e. 1% of turnover) with 'persons in the State.' The Revenue Commissioners have yet to issue guidance on how 'persons in the State' will be identified.

However, in a recent note issued by the Revenue Commissioners in relation to the VAT treatment of e-gaming services, the Revenue Commissioners indicated that the place of supply is the place where the customer is established, has a permanent address, or usually resides, and a similar view may be adopted for betting duty.

Betting duty (to be known as 'betting intermediary duty'), is to apply to remote betting intermediaries, at a rate of 15% of commission charges. 'Commission charges' relate to the amount that parties in the State are charged for using the facilities of a remote betting intermediary. This charge could be by way of deduction from winnings or otherwise.

Enforcement under the new legislation

Under the new Act, it will be an offence to operate as a bookmaker, a remote bookmaker or as a remote betting intermediary without a licence. The penalty for operating without a licence is a fine of up to EUR €150,000, for a first offence (EUR €300,000 for subsequent offences), or imprisonment for up to five years, or both, on conviction on indictment. The Act empowers the Revenue Commissioners to bring summary proceedings against an unlicensed operator.

A particular noteworthy provision is that an offender can be prosecuted *in absentia*. Where a prosecution is brought and an operator fails to appear before the

Irish court, the operator will be considered to have entered a plea of not guilty and can be prosecuted even though that offender has not presented at the court.

The Revenue Commissioners will also have the power to issue compliance notices to third parties which provide certain facilitation services to unlicensed operators and which enable the unlicensed operator to carry on its business. Examples include facilitating advertising or providing internet services that would assist the unlicensed operator. A failure to comply with the compliance notice is an offence which is punishable by a fine of up to EUR €50,000 or imprisonment for up to two years, or both, on indictment.

Betting with underage persons

The offence of betting with underage persons (i.e. persons under the age of 18) will henceforth extend to include 'the creation of a betting account.' The Act provides that it is a good defence to show that the operator believed and had reasonable cause for believing that a person was over 18. To avail of this defence, age verification checks would most likely have had to have been carried out at the time that the account is created rather than at a later date.

Impact of the Act on the betting market in Ireland

The enactment of the Act will, for the first time, bring remote operators within the licensing and taxation regime in Ireland and will ensure a more level playing pitch for all bookmakers, both on the high street and online. To date, only retail bookmakers have been obliged to obtain an Irish licence and to pay tax on betting transactions with Irish customers. Retail bookmakers will welcome the fact that online operators will

also be required to comply with the Irish regulatory and taxation regime.

Retail bookmakers will also welcome the updates relating to bookmakers' licences. That the holder of a retail bookmaker's licence will be permitted to accept a certain level of bets placed remotely under their retail licence (as long as they satisfy the criteria set down in the Act) will be particularly welcomed by small, independent bookmakers.

For remote operators, the Act presents the opportunity to operate within a regulated market. That provides increased certainty as to the obligations that the operator has to meet from a regulatory and taxation perspective.

The new legislation also represents a more commercial approach to the licensing application process with corporate entities, as well as individuals, being permitted to apply for a licence.

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