



*The Gaming & Leisure
Association of Ireland*



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**Minister David Stanton, TD
Department of Justice and Equality
Montague Street
Dublin 2**

8th November 2017

Re: Request to Submit Written Views Regarding Part 13 of the Courts & Civil Law (Miscellaneous Provisions) Bill 2017

Dear Minister Stanton,

The Gaming & Leisure Association of Ireland (GLAI) welcomes the opportunity afforded by you to comment on the General Scheme of the Courts and Civil Law (Miscellaneous Provisions) Bill 2017, and hope that you will find our contribution constructive.

The guiding principle of the GLAI is that responsible gaming can only be promoted in Ireland through a regulated environment, which will, in turn, protect vulnerable persons, and ensure consumer protection. Gambling should be 'regulated' rather than 'prohibited' which is the approach provided for in 27 of the 28 European Union Member States, Ireland being the only exception.

The GLAI has major concerns, resulting from the amendments proposed under the Miscellaneous Provisions Bill 2017. Primarily, this legislation could lead to the commercial failure of all GLAI member businesses, to the benefit of larger international operators whose presence is predominantly online, and, thus, would be scarcely impacted by the proposed amendments. Furthermore, the Miscellaneous Provisions Bill could in fact further expose consumers to the unregulated online sector through an increase in market domination as a result of the collapse of land-based casino services.

The Regulatory Impact Assessment (RIA) supporting the amendments in Part 13 of the Miscellaneous Provisions Bill, states that '*existing anomalies in current (Gaming) legislation will be corrected*'. Having reviewed all amendments and supporting documentation made available by the Department of Justice, it is clear that the amendments, as published, would not correct anomalies in existing legislation, but rather would reinforce existing inconsistencies and incoherencies. The GLAI believes there is a fundamental contradiction between the benefits anticipated in the RIA and the actual impact the amendments would have, if enacted as published.



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Having identified this inherent contradiction between the anticipated benefits set out in the Regulatory Impact Assessment and the likely outcomes if the amendments were enacted as published, the GLAI sought clarity from your office as to the objectives of the Bill shortly after the General Scheme was published. Unfortunately, this request was simply not engaged with and the reason given was that the General Scheme is currently with the Office of the Parliamentary Counsel for drafting purposes. This is disappointing from the GLAI's perspective. While we are conscious that the Bill may differ when drafted from the General Scheme as published, some clarity regarding the original intentions of the General Scheme as they relate to the issues highlighted by the GLAI may have gone some way to addressing the concerns of GLAI members.

In the absence of this clarification, the GLAI, along with other interested parties, received an invitation to comment on the amendments as published. In the absence of clarity as to which set of outcomes the Minister would like to achieve, the GLAI is obliged to focus its attention on the likely impact of the draft amendments as published.

The publication of these draft amendments now places two draft legislative options for the enhancement of consumer protection vis-à-vis gambling in the public domain, namely the General Scheme of the Gambling Control Bill published in July 2013 on the one hand, and the amendments to the Gaming & Lotteries Act 1956 contained in the General Scheme of the Courts and Civil Law (Miscellaneous Provisions) Bill published in August 2017, on the other.

The General Scheme of the Gambling Control Bill 2013 draws upon the recommendations of the 'Casino Committee' contained in its report *'Regulating Gaming in Ireland'* published in July 2008, as well as recommendations made by the Casino Gaming Control Unit in the Department of Justice in its report *'Options for Regulating Gambling'* published in December 2010.

The General Scheme of the Gambling Control Bill has also completed pre-legislative scrutiny by the Justice Committee, under your Chairmanship of the Justice Committee. The report from the Committee back to the Minister of the day was supportive of the principles underlying the Gambling Control Bill, namely that gambling should be permitted but in a limited and controlled manner under the supervision of a regulatory authority.

The amendments to the Gaming & Lotteries Act 1956 contained in the General Scheme of the Courts and Civil Law (Miscellaneous Provisions) Bill 2017, purports to represent an attempt to reform the 1956 Act, such that it might no longer be considered 'unfit for purpose' by industry, public health advocates and political stakeholders alike, in what is now a significantly changed environment. However, in order to achieve this objective, it is necessary to change the fundamental character of the 1956 legislation which is largely based upon the archaic principle of 'prohibition'.



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While ‘prohibition’ may have been considered an appropriate regulatory tool that could deliver the legislature's desired outcomes in 1956, a time when Ireland was a remote island on the edge of Europe with limited access to air travel and the internet was yet to be invented, it is no longer an appropriate regulatory tool in today’s highly technological environment where gambling services are available on a 24/7 basis from jurisdictions outside the control of the Irish authorities.

Since its publication in 2013, the Gambling Control Bill has been well received by politicians, the media, and health professionals alike, and is universally regarded as the most appropriate means to enshrine proper consumer protection in legislation, in an era of entirely unrestricted access to all forms of gambling services via the internet. Despite this accumulation of goodwill towards the Gambling Control Bill, the decision was made to introduce a series of amendments to existing legislation, that in their current format, are not only flawed, but also fall far short of the expectations of all concerned parties, and do not offer any additional protective measures to consumers.

While we welcome your acknowledgement of the need for regulation, as Minister responsible for in this area, and are encouraged by your desire to bring forward measures that will ultimately help enshrine consumer protections for Irish citizens in legislation, the sudden and entirely unexplained deviation away from the Gambling Control Bill is a cause of great concern, and we believe is contrary to the public’s best interests.

The rationale for this sudden divergence is unclear. The Minister, in response to a number of Parliamentary Questions in 2016 and 2107, has stated that due to the “*complex nature*” of the Gambling Control Bill, he wished to “*prioritise*” certain areas of pressing concern before drafting commences on the Gambling Control Bill, including the introduction of a minimum age of 18 for all forms of gambling, and to increase the stakes and prizes for slot machines.

In pursuing amendments contained within the Miscellaneous Provisions Bill, a full year of both the Minister’s time in office and the Department’s resources has already been used. Delays are likely to continue for a considerable length of time to come, as the Miscellaneous Provisions Bill – a complex piece of legislation in itself dealing with a number of diverse and disparate sectors and activities – has only just commenced legislative scrutiny. This will in turn further delay the progress of the Gambling Control Bill, which the Minister desires to progress once the amendments are finalised and enacted. We believe that this eighteen-month period could have been better utilised unravelling the alleged “*complexities*” of the Gambling Control Bill, which many of our EU neighbours have managed to overcome.

Since the General Scheme of the Gambling Control Bill was first published in July 2013, we have been advised that chief among the many reasons for the delay in drafting the Gambling Control Bill, is the lack of available resources in the Office of the Parliamentary Counsel. We believe that the same resources which are now being made available in the Office of the Parliamentary Counsel to refine the text of the Miscellaneous Provisions



Bill, could be used more productively to develop the text of the Gambling Control Bill. Rather, time and resources are being inefficiently used attempting to develop amendments for a piece of legislation which is fundamentally ill-equipped to deal with the advances in technology since 1956.

Furthermore, in the Department's Regulatory Impact Assessment (RIA) ahead of the publication of the Miscellaneous Provisions Bill, the Department notes the likely "sizeable" increase in both staffing and financing in the event of the implementation of the Gambling Control Bill. While the GLAI fully acknowledges the need for an increase in both areas to properly implement the Gambling Control Bill, such increases would be incremental rather than immediate, and as such, costs could be staggered over a longer period of time.

We anticipate that the additional cost of a regulatory authority would be counteracted by the broadening of the tax base across the industry, particularly online operators who currently fall outside current legislative architecture. Furthermore, considering the Minister's stated objective of establishing an interim "regulator in shadow format", such funds would be better used through working towards the implementation of the Gambling Control Bill in full.

At a time when online gambling in Ireland is at an all-time high, with Ireland ranking first, globally, in terms of online gambling losses per capita¹, one must question why the Department of Justice has decided not to focus its attention on progressing the Gambling Control Bill in favour of an alternative that does not offer any additional consumer protection at this late stage, particularly when there is no obvious overt opposition to the Gambling Control Bill.

As stated previously, we welcome the Minister's wish to introduce regulation for the supply of gambling services to Irish citizens, unfortunately however, the amendments as published do not include a number of key measures that are provided for in the Gambling Control Bill, and in fact fail to satisfy the desired outcome of improving consumer protection. This exposes the amendments to significant criticism for a number of reasons, as identified below:

- Whereas the Gambling Control Bill allows for the establishment of a regulator with responsibility to ensure that all gambling service providers (both land based and online) are licenced and that they provide their services in a socially responsible manner, the amendments do not allow for the establishment of a regulatory authority to achieve the same outcome. Whilst conscious the Minister has recently proposed the establishment of an interim regulator in shadow format, the GLAI is of the opinion that only through the Gambling Control Bill will Ireland be able to offer gambling and gaming services in a safe manner, and as such, all other endeavours represent an inefficient use of resources.

¹ The Economist, *The world's biggest gamblers*, 09.02.2017
<https://www.economist.com/blogs/graphicdetail/2017/02/daily-chart-4>



- The amendments neglect to include Private Members' Clubs among those entities entitled to apply for a Garda permit, court certificate, and a revenue licence. Such an omission could lead to Private Members' Clubs being unable to obtain a licence, and therefore result in as many as 400 jobs around the country would be lost. However, provision is made for carnivals, fun fairs, travelling shows (all of which are particularly enticing for children), and licenced premises (where alcohol can be sold at the same time). The mixture of gambling and alcohol on a widespread basis, a situation that is sure to develop if licenced premises are permitted to introduce gambling to their venues across the country, is contrary to best practice and will only increase the incidence of problem gambling.
- The amendments do not address the prevalence of online gambling in Ireland via the internet. This is of particular concern when one takes into account the results of a recent Australian nationally representative prevalence survey, which found that the overall problem gambling rate among internet gamblers (2.7%) was three times higher than those who don't gamble online (0.9%).² Furthermore, so long as online service providers can house their servers offshore, yet still have access to the Irish market, they will continue to remain outside the reach of Ireland's regulatory authorities. A licencing system, such as that proposed in the Gambling Control Bill, which requires operators wishing to secure access to the Irish market to locate their servers in Ireland, will facilitate robust regulatory control.
- Unlike the Gambling Control Bill, the amendments do not include provision for a levy on the industry to facilitate the establishment of a social fund for research, education and treatment.
- Unlike the Gambling Control Bill, the amendments do not include a mandatory requirement for all service providers, both land based and online, to offer a self-exclusion facility to those customers who may need to take a break from gambling.
- While we agree that one of the most important measures in mitigating the incidence of problem gambling is to increase the minimum age for gambling to 18, the absence of a skilled and resourced regulator to ensure effective enforcement, reduces this measure to a window-dressing exercise, particularly as self-evidently underage gambling is more prevalent in an online environment where the operator is not afforded the opportunity to interact directly with new customers.
- The proposal that a permit or licence can only be used for games where *'the odds of the banker and the player are equal'* is hugely damaging. Obviously, all gambling service providers must have a margin in order to cover operational costs and to deliver a return on investment. Such a provision would

² Gainsbury, S. M., Russell, A., Hing, N., Wood, R., Lubman, D. I., & Blaszczynski, A. (2014). The prevalence and determinants of problem gambling in Australia: Assessing the impact of interactive gambling and new technologies. *Psychology of Addictive Behaviors*, 28(3), 769-779. <http://dx.doi.org/10.1037/a0036207>



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render many existing businesses no longer commercially viable. In such circumstances, the GLAI estimates that approximately 400 jobs around the country would be lost in our sector alone.

- The proposal that a permit or licence cannot be used for games supplied by means of a gaming machine discriminates against land based gaming machine operators, who would be unable to use a gaming machine, while online operators whose servers are off shore beyond the reach of the Irish authorities, would be able to continue to provide their slot machine services online unaffected by the Miscellaneous Provisions Bill.
- The financial limits proposed for Stakes (€10), a maximum prize in any game (€750), and maximum prize for 'connected games' (€3,000) present acute challenges in the context of a Private Members' Club and the 'Casino' services we offer. There is no indication that these limits would apply to online gaming thereby giving the sector an unfair commercial advantage. Similarly, there is an attempt to give bookmakers an exemption from these restrictions on stakes and prizes on the tenuous basis that one is 'betting' on the outcome of a virtual roulette in a bookmaker's retail outlet whereas one is 'gaming' in an amusement hall or private members' club.
- This lack of clarity between 'betting' and 'gaming' also gives rise to a breach of the EU principle of fiscal neutrality which states that similar type services, regardless of the delivery channel, must be subject to the same tax burden, as failing to do otherwise in effect constitutes State Aid. Accordingly, roulette games made available via the internet in retail bookmakers outlets should be subject to VAT @23% in the same manner as that applied to private member clubs and amusement arcades.
- These archaic principles underpinning Part 13 of the 2017 Bill, if enacted, would result in the closure of reputable land-based operators, forcing customers to either go online where there is a higher risk of problem gambling, or to venture into underground gambling operations which could be managed by criminal gangs. Bearing in mind that the primary purpose of any legislation is to enhance consumer protection and to prevent the involvement of criminals in the provision of gambling services, these amendments are grievously deficient in tackling the task at hand, and in our opinion, would be a retrograde step.

Politically, these amendments have the potential to bring about a number of significant difficulties, not least an erosion of support for the Gambling Control Bill. The Gambling Control Bill is widely regarded as appropriate and long overdue.

In terms of Ireland's international reputation as a financial centre, it is also worth noting that the Financial Action Task Force (FATF), upon completing its recent mutual evaluation of Ireland, stated that anti-money laundering legislation should be broadened to include other sectors in the gambling industry besides Private Members' Clubs. FATF also stated in its report that Private Members' Clubs should be properly licenced. These



amendments as published have failed to reflect the recommendations proposed by FATF, at a time when Ireland should be trying to mitigate the negative implications of Brexit by making the jurisdiction attractive as a hub for the supply of financial services and the proper regulation of the betting/gaming sector.

The amendments proposed under the Miscellaneous Provisions Bill also favour online casino service providers, which operate beyond the effective reach of the Irish regulatory authorities, while virtual gaming in bookmakers would be granted an exclusion from the proposed amendments.

In the event of further migration of Irish players onto the online environment occurs, it should be noted that funds derived from those players who gamble online will more than likely not be repatriated to the State. Also, considering many of the servers accepting such wagers are maintained off-shore, they are beyond the effective reach of the State's authorities, making it virtually impossible to perform revenue audits on their tax returns on income derived from Irish citizens.

Additionally, the GLAI is of the opinion that the amendments as proposed are legally deficient for the following reasons:

- The amendments as published could potentially criminalise gaming activities in one sector while facilitating the supply of identical or near identical gaming services in other sectors;
- Restrictions based on geographical districts constitutes a breach of EU legal principles and the amendments would create further restrictions that do not apply equally across all sectors;
- Land based operators must seek approval of a local Superintendent whereas no similar requirement is proposed for online operators;
- There is no provision for appeal in respect of a negative decision by a Superintendent;
- One year's duration for a licence restricts the entry of new operators into the sector as the initial investment is such that a longer timeframe than one year is required to secure an appropriate return on investment;
- The amendments as published constitute a breach of the principle of legal certainty and the protection of legitimate expectations guaranteed by EU law; and
- As the proposed amendments to the Gaming & Lotteries Act are technical in nature, the European Commission must be given notification of the proposed changes.

Erosion of the EU Commission's goodwill

Article 8 of Directive 98/34 requires Member States to notify any draft technical regulations to the Commission, other than those which merely transpose standards, and to justify their proposed adoption. Article 8 further requires Member States to refrain from applying them pending Commission assessment of their compatibility with European Union law standards. Given the technical nature of these amendments, the GLAI is of the view that the provisions of Part 13 of the Bill may not be adopted in advance of notification under the EU Technical Standards Directive (Directive 98/34) to the European Commission for its assessment and approval.



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Previously, when the Betting Amendment Bill 2013 was notified to the Commission, the Commission flagged concerns about the lack of consumer protection measures contained therein. However, on foot of reassurances provided by the Irish officials championing the Betting Amendment Bill 2013 that an appropriate set of wide ranging measures enhancing consumer protection would be enacted shortly thereafter via the Gambling Control Bill, the EU Commission granted its approval to the Betting Amendment Bill.

It is entirely reasonable to expect that the EU Commission, upon being notified of the amendments contained in Part 13 of the Miscellaneous Provisions Bill will firstly, identify that they too do not contain any significant consumer protection measures, and secondly, the Commission might well be weary of any further reassurances that the Gambling Control Bill will follow shortly based on previous experience.

In summary, while we welcome the Minister's continued commitment to the area of gambling regulation, these amendments are a retrograde step that fail to include many of the consumer protection measures which a modern regulatory regime should include. While it may not be the Minister's intentions to 'prohibit' gaming, the reinforcement of the principle that 'the odds of the player and the banker must be equal' would effectively result in the closure of those land based operators who could no longer operate in a commercially viable manner. This would divert customers towards online service providers or to underground gambling operations which can be managed by organised criminal gangs.

We remain unsure as to why the Minister has deviated away from the Gambling Control Bill. Clearly if the resources are available in the parliamentary counsel's office to draft these amendments in the Miscellaneous Provisions Bill, the same resources could be used to commence drafting of the Gambling Control Bill. With regard to the 'complicated' nature of the Gambling Control Bill that is often cited as a reason for postponing its drafting, there are a number of well-respected regulatory regimes already in place which we could draw upon, not least the UK Gambling Commission, which provides an excellent example of what can be achieved in the longer term.

As you are aware from previous correspondence the GLAI is one of the most ardent supporters of regulation for both our own sector and the broader gambling industry. However, having considered all of the deficiencies of the proposed amendments as outlined above, and their likely impact if they were to be enacted as drafted, the GLAI is recommending that Part 13 of the Miscellaneous Provisions Bill be removed, and available resources diverted to and tasked with developing the General Scheme of the Gambling Control Bill into draft legislation.

We believe that were these amendments to be progressed, they would add further complications to an already difficult situation; serve as an excuse to those who oppose the Gambling Control Bill to delay its progress further and; would weaken Ireland's reputation as a jurisdiction that is able to deliver robust regulation comparable to best international standards.

Again Minister, we welcome your commitment to bringing forward legislation in this area and hope you will understand the genuine concerns of our members have with this General Scheme. We look forward to your



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response and remain committed to working alongside you and your department over the coming weeks and months on options for regulating the industry. As always, the GLAI is at your disposal should you, or your officials, wish to meet to discuss any of the above matters in more detail.

Yours sincerely

David Hickson
Director - GLAI