

McCann Fitzgerald Review of Gambling Regulation in Ireland Questionnaire

INTRODUCTION

1. Do you consider that the current legislation which exists in Ireland to regulate betting, gaming and lottery activities is in need of reform?

The Gaming & Leisure Association of Ireland has consistently maintained that there is a need for reform of gambling legislation for betting and gaming, both land based and online.

Current legislation dates back to 1931 for betting, prior to the electrification of Ireland, while the Gaming & Lotteries Act 1956 was enacted just months prior to the invention of the first computer hard drive by IBM.

Over the intervening 60-years significant technological advances, in particular the introduction of the internet and mobile devices, have greatly facilitated access to gambling services, no longer restricted by geographical isolation or opening hours. The successful migration of gambling services from land-based premises to online platforms has facilitated significant growth in and across all sectors. Fundamental consumer protections, however, have not kept abreast of these fast-developing technologies, meaning that Irish consumers are vulnerable to sharp practices by online operators. Industry-led voluntary initiatives have been shown time-and-again to be largely ineffective.

Furthermore, most if not all online providers of online betting and gaming services locate their servers off-shore beyond the reach of the Irish authorities. As the servers are based outside of the Irish jurisdiction, online transactions are deemed to be outside of this jurisdiction resulting in a net outflow of funds.

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. It is clear that current legislation has been rendered unfit for purpose by the disruptive impact of technology on the gambling industry. Accordingly, reform of gambling legislation is long overdue.

LICENSING

2. Do you agree with the Government position that an independent regulator be established to manage all aspects concerning the application for and issuance of licenses and enforcement of compliance?

The Gaming & Leisure Association of Ireland has always advocated that an independent regulator is required to oversee the gambling industry. Legislation without robust enforcement would render the regulator ineffective and prevent the legislation from achieving its key objectives, namely:

- I. The prevention of criminal involvement in the provision of gambling services;
- II. Ensuring that equipment and software used for the provision of gambling services have not been tampered with and that gambling services are provided in a fair and responsible manner; and
- III. Assisting with the identification and mitigation of problem gambling.

These core principles often conflict with the core commercial objectives of many businesses, that is to make profits and achieve as high a return for investors as possible. In order to ensure that gambling service providers include the principles of responsible gambling within their business focus, an independent regulator is required to oversee their activities and to impose sanctions when necessary.

Also, in the interests of transparency and to prevent the exertion of political influence or the appearance of political influence over issues such as the awarding of operating licences, an independent regulator free from political influence is required.

3. How should the fees and charges that might apply to gambling licences and permits be calculated? For example, should a flat application fee, a flat annual licence fee, fees per game or machine, fee based on premises, fee based on turnover (or GG in previous year), etc. be applied?

A legal distinction between 'betting' and 'gaming' (distinguishing characteristics below) is critical to ensuring good regulation and that fees and charges are applied equally, based on the nature of the activity, regardless of the platform through which it is delivered to the end user.

The internet has facilitated the convergence of gaming and betting. E.g. the introduction of FOBT's and Virtual Roulette games into high street retail betting outlets which are not suitably regulated for gaming activities.

Betting:

- Betting on the outcome of an event, where the outcome has yet to be determined;
- The customer has no part or influence on the outcome of the event being bet upon;
- The service provider, sets the odds against which they are prepared to pay out for each possible outcome. They have the flexibility to manipulate the odds to ensure that they achieve a profit.

Gaming:

- The individual placing the bet takes part in the event or process;
- Players influence their chances of winning an individual game depending on the strategies they adopt; however
- The long-term odds of winning are predetermined or set by the rules of the game.
- A high frequency of events for which wagers can be placed, for example roulette.

Subject to the nature of the service (gaming/betting), tax should be calculated in an equitable manner regardless of the delivery channel of platform used (land-based/online).

We believe that a tax on Gross Gaming Revenues (for the previous quarter), that is total bets placed less winning bets paid out, should apply at a rate that is commercially viable.

An initial licence fee should also apply. This fee should be based on the number of gaming tables in a casino, gaming machines in a gaming arcade, or amusement machines in an amusement arcade.

4. It would be good if the future licence application was an online only system.

As licences for casinos tend to be for extended periods of time to ensure a return on the significant investment that is required to open a casino, typically 20 years, an online application service is not essential. However, any licences that require renewal on an annual or bi-annual basis would be best served by an online facility.

5. A system of automatic licence renewal should be introduced (based on compliance with terms and conditions of a licence previously issued).

While an automatic system for licence renewal where an operator is deemed to be compliant would be welcome, this should not be an initial priority. However, it should be borne in mind that a non-automatic licence renewal process provides the regulator with a natural opportunity to review their level of compliance and customer protection measures.

6. In your opinion, what is the optimum term for gambling licences?

Typically licences tend to be for a predetermined period of time, for example in the casino sector, a 20-year licence would be considered appropriate. While machine licences have historically been for 1 year, a 2/3-year licence would reduce the Regulator's and the operators' annual administrative work load. However, while operators might prefer an unlimited licence, a requirement to renew would provide a natural opportunity for the regulator to review an operator's level of compliance with their licence terms and conditions.

7. Please select Statement A or B:

- a. There should be a small number of broad categories of licence categories (e.g. betting & gaming licence (online), betting & gaming licence (retail), betting licence (retail), gaming licence (retail), casino licence (retail and online), lottery (retail and online), bingo (retail and online), etc)**

From the perspective of the GLAI, it is difficult to assess whether broader or more narrow licence categories would be optimal, given that this would depend on how fees and charges will be calculated, namely whether it would be a flat fee/charge per licence type, or a sliding scale irrespective of licence category.

If a system of broad categories of licences were adopted, the regulator should have the authority to establish sub-categories if required. A system of broad category licences only, would not work where fees and charges are calculated solely on the basis of licence type. However, if fees and charges are calculated on a sliding scale taking into account the size and scale of the operations for which the licence is being sought, it may be possible to operate with broad categories of licences. For example, a gaming machine arcade with 400 machines as opposed to an arcade with 40 machines, should not have to pay the same fees and charges if applying for the same licence.

- b. There should be multiple categories of licence (e.g. specific variations of betting licence, specific variations of gaming licence, etc.)**

8. In addition, do you agree with the introduction of personal licences for key gambling management personnel in addition to a "company licence"?

The Gaming & Leisure Association of Ireland agrees that the proposal to introduce personal licences for key gambling management personnel is essential as the Garda vetting process to

secure a personal licence would help achieve one of the key reasons for introducing gambling legislation, namely to prevent the involvement of criminal gangs or individuals with close links to criminal gangs in the provision of gambling services.

- 9. Do you agree that the following categories of service suppliers to the industry should be obliged to hold a licence and register with an independent regulator? - Gaming equipment manufacturers - Software suppliers - Platform suppliers - Suppliers of betting televisions channels - Suppliers of security/verification services - Data/analytics suppliers - Suppliers of payment solutions**

We agree that it would be prudent to require certain categories of suppliers to the industry to hold a licence and register with an independent regulator. Such measures would help to ensure one of the primary objectives of new legislation, namely to provide customers with appropriate reassurances that gambling services are being provided in a fair and consistent manner. It is essential that the software and equipment used by operators in the provision of their gambling services has not been tampered with or manipulated in a manner which could adversely impact the results for either the customer or the operator.

OFFENCES

- 10. The offences contained in existing Irish gambling legislation are sufficient to deter breaches of the law.**

The Gaming & Lotteries Act 1956 does not facilitate the imposition of an administrative sanction, such as the threat or suspension of an operator's licence for offences identified in the legislation. Administrative sanctions are critical to ensuring good enforcement, as some breaches of the legislation or the Regulator's guidelines are by their nature not criminal; yet warrant sanction. Similarly, it can often be very hard to secure a criminal conviction where the threshold for conviction has to be 'beyond reasonable doubt' as opposed to a civil matter which relies on the lesser standard, the 'preponderance of evidence'. A range of administrative sanctions would enable the regulator to apply a sanction without the cost or distraction of man hours preparing for a court hearing. Administrative sanctions combined with the power to publish decisions and sanctions imposed on an operator would be a significant deterrent as operators will wish to maintain their good reputation as a responsible operator.

- 11. There should be provision for criminal offences under gambling legislation.**

Clearly where an operator fails to adhere to the terms and conditions of their licence despite ongoing efforts by the regulator to secure compliance by means of administrative sanctions, then the regulator should have recourse to criminal sanctions where appropriate to do so. Also, certain breaches of the legislation may be deemed so grievous that they warrant criminal sanctions, for example operating without the appropriate licence in place.

- 12. Would you agree with the introduction and imposition of maximum penalties for certain offences (breaches of licence, permit conditions etc.) under new Irish Gambling Legislation?**

We would concur that there should be a maximum penalty for certain offences, however rather than a static limit, for example €10,000 we would recommend a flexible limit, for example 10% of Gross Gaming Revenue. This would help to ensure that the impact of administrative sanctions such as fines is proportionate to the size of the operation. Clearly a maximum fine of €10,000 would not have a meaningful impact on a multinational operator in

the same way that it might have on an operator with one standalone premises, and therefore, in order for sanctions to be effective, they must be proportionate.

13. Do you agree that penalties should be based on a percentage of revenue?

Yes, in order that penalties are proportionate, they should be calculated on the basis of revenue.

SANCTIONS

14. The regulatory authority should have the power to impose administrative sanctions on operators such as fines, suspension of licences (retail and online), closure of retail premises etc.

The regulator, in order to be effective and achieve the core objectives of the legislation, must have appropriate powers of enforcement available to them, including fines, suspensions of licences, closure of retail premises, and denial of service to online operators beaming their services into this jurisdiction by means of ISP Blocking.

SAFEGUARDS

15. Operators should be required to explicitly display all terms and conditions for bets, payouts etc, both in shop and online.

The publication of terms and conditions is a fundamental requirement to ensure transparency for the consumer and to mitigate the instance of problem gambling. The odds and chances of winning should also be clearly explained for the customer.

16. Operators should be allowed to refuse or restrict bets or disallow free bet or bonus offers from successful gamblers.

There are occasions where it is justified for an operator to refuse or restrict bets. Where, for example, an operator has valid reasons to believe that an individual or a number of individuals are colluding to manipulate the results in a fraudulent manner, but they are unable to satisfy the 'beyond reasonable doubt' test required for a criminal conviction, they should retain the right to suspend or discontinue their service as they see fit.

17. Free bets or bonus offers should only be allowed under clear and accessible conditions.

Any promotional offers should only be permitted where the terms and conditions are accessible and easily understood. Failure to properly explain terms and conditions in advance to the customer may lead to misunderstandings over payment outcomes thereby undermining the customer's confidence in the integrity of the operator if they feel hard done by.

18. Do you agree with the introduction of player protection methods to protect vulnerable people (including minors) from gambling (methods including without limitation age verification checks, a voluntary self-exclusion register, restrictions on credit facilities, ISP blocking, restrictions on advertising and sponsorship, restriction on payment services, etc.)?

The Gaming & Leisure Association of Ireland has long championed such measures for the protection of the vulnerable. While no protection measure can be entirely effective on its own, a combination of measures can go a long way to mitigating the instance of problem gambling.

19. The introduction of a voluntary self-exclusion register would be an effective measure.

The Gaming & Leisure Association of Ireland supports the immediate introduction of a self-exclusion facility which should be mandatory for all gaming and betting operators, both land-based and online, to have available to their customers. While we support the introduction of a centralised self-exclusion register, we concede that a centralised register may take time to implement and may require a separate consultation process by the regulator across all sectors of the gambling industry.

20. Do you agree with the introduction of restrictions on credit facilities to be used for gambling (for instance where the person may pay to the operator the stake or bet, as the case may be, from winnings, if any, and where, in the event of no winnings, the amount owing to the operator accumulates and is set-off against future winnings)?

It is bad practice for an operator to provide credit to a customer to facilitate gambling. Such a facility could encourage a customer to 'chase losses' only to find themselves in greater financial difficulties after they failed to win back their initial losses. Accordingly, we do not recommend that operators be allowed to provide customers with credit facilities.

21. The introduction of ISP or payment blocking in certain circumstances under Irish gambling legislation would be effective.

The Gaming & Leisure Association of Ireland notes that ISP blocking is used by regulators in other regulated jurisdictions, notably France and Italy and is a sufficiently disruptive tool to ensure rogue online operators can be denied access to Irish citizens. Where an online service is blocked, even intermittently, it can be sufficient to erode customers' confidence in the *bona fides* of the site. Payment blocking is also critical to preventing unlicensed operators from accessing Irish citizens and the prevention of any money laundering activities that might be identified.

22. Restrictions should be imposed upon gambling operators in relation to advertising, promotion and sponsorship of their products.

The Gaming & Leisure Association of Ireland believes that advertising, promotions and sponsorship should be regulated. Examples of best practice include adhering to the 9pm watershed on television, not facilitating 'in game betting' during a sporting event, not accepting wagers on sporting events performed by those under 18, and not glamorising gaming or betting activities to young people. Such measures are part of the normal regulatory apparatus in properly regulated jurisdiction and are required to ensure the protection of the weak and vulnerable, for example problem gamblers in recovery.

This approach was also adopted by the Irish government in the development of the Public Health (Alcohol) Bill 2015, which also sought to reduce social harm by addictive products.

23. Debts arising from gambling should be capable of being resolved through an Alternative Disputes Resolution/Mediation mechanism rather than recourse to the courts system.

While it would be preferable for any disputes regarding debts arising from gambling be resolved by mediation in the first instance, recourse to the court system may be required in some cases and should be available to those who can demonstrate that they have tried mediation first.

SOCIAL FUND

24. Do you agree with the establishment of a social fund to help fund research, education and treatment of problem gamblers (and other related matters)?

The Gaming & Leisure Association of Ireland has always supported the establishment of a social fund for education, research, and treatment of problem gambling. More importantly we maintain the view that the fund should be generated by a levy on the Gross Revenues of each sector / operator. The fund generated by this statutory levy should be ring-fenced to ensure that it is used for its intended purpose.

25. Do you agree that an independent regulatory authority should be tasked with administering and managing a social fund to the extent that one is established?

The Gaming & Leisure Association of Ireland supports the view that any social fund should be administered and managed by an independent body, free from political or commercial influence. Accordingly, we consider that it would be entirely appropriate for an independent regulator to manage and administer the social fund.

BETTING

26. "Virtual" events should be legislated for.

Any event, whether virtual (for example software generated roulette / poker / races) or non-virtual (live table roulette / poker / races) which is used by a gambling service provider for the purposes of attracting wagers from Irish citizens must be regulated to ensure that the outcome of the event has not been manipulated or tampered with.

27. If legislated for should they be categorised as betting or gaming (or potentially both)?

Wagers on virtual events constitutes gaming as it has the following characteristics (Ref response to Q3)

- The outcomes of virtual events are pre-determined by a software programme and therefore 'known' momentarily before the event begins, unlike betting which relies on the events, the outcome of which has yet to be determined.
- The odds are fixed by the software programme to generate a gross win for the operator of approx. 30%
- The frequency of events is high by comparison to a typical race meeting, rather they follow similar frequency patterns to the number of hands played at a blackjack table, or spins of a wheel at a roulette table.

GAMING

28. There should be limits placed on stakes and prizes on gaming machines, either mechanical or online.

In accordance with international best practice, there should be limits on stakes and prizes, particularly where there is a high frequency of events in a short space of time, such as gaming machines, whether land based or virtual. Limits and Prizes should not be set out in primarily legislation, rather the regulator should have the authority to review stakes and prizes every 3-5 years, taking inflation and the cost of living into consideration as appropriate.

29. Licensed gaming and amusement machines should be permitted in a wide range of locations, premises, such as pubs, restaurants, shopping centres, etc.

It is considered best practice to limit gambling activities to properly licenced premises where staff are trained to identify attempts to launder the proceeds of crime or to engage with a customer if they observe behaviour indicative of excessive or problem gambling, for example inviting them to consider a self-exclusion option. Accordingly, it would be contrary to best practice if licenced premises for the sale intoxicating liquor were permitted to secure gaming or betting licences. With regard to the placement of amusement machines with limited stakes and prizes, we currently have no strong opinion as to where they may be housed.

30. Should gaming machines be able to accept stakes and pay-out prizes in the form of banknotes or in non-cash forms (e.g. smartcards) or both, subject to the introduction of necessary safeguards?

Subject to the introduction of the appropriate safeguards, we consider that gaming machines should be able to accept both banknotes and smartcards as operators need to be able to cater to both the casual player (tourists / irregular visitor) and more regular players who might prefer the security or promotional opportunities which a smartcard might offer them.

CASINOS

31. Should Ireland legislate for licensing of casino games in land-based casinos or online/virtual casinos?

The Gaming & Leisure Association of Ireland is of the strong opinion that Ireland should introduce legislation which facilitates the licencing of both land-based and virtual casinos and has actively encouraged successive Governments since January 2006 to introduce legislation that would put in place a licencing system with appropriate terms and conditions attached that would encourage responsible gambling.

In the absence of a licencing system that obliges operators to adhere to the terms and conditions of their licence set by a regulator, or to undergo Garda vetting to ensure they have no criminal connections, consumer protection is weak and efforts to mitigate the incidence of problem gambling will remain poor.

A policy of prohibition as a means of reducing the instance of problem gambling is no longer viable as the advent of the internet facilitates immediate access to all forms of gambling, by passing traditional geographical barriers or restrictions on terrestrial opening hours. Land based operators also provide greater opportunity to engage with those customers who may be behaving in a manner which indicates that they may have a gambling problem.

32. There should be a limitation on the number of licences issued for such casinos.

It is regarded in many regulated jurisdictions that there should be restrictions on the number of casino licences available. While we do not oppose such a measure, it must be borne in mind that where limits are too restrictive, operators, and hence customers, will migrate to the online platform, circumventing land-based restrictions and channelling customer's money off-shore. The General Scheme for the Gambling Control Bill published in 2013 proposed a limit on the number of casino licences of 40. We consider this limit to be appropriate taking into account geographical and population requirements.

33. There should be a restriction on the number of gaming tables and gaming machines/terminals within such casinos.

The General Scheme for the Gambling Control Bill published in 2013 proposed a limit on the number gaming tables within a casino at 15, allowing for a minimum of 3 gaming tables for venues in less populated areas. We consider that these limits are appropriate to the size and shape of the casino market in Ireland. The GLAI does not support the introduction of a super-casino as the Irish casino market is quite small and fragmented. With regard to the number of gaming machines in a casino, we consider that a ratio of 5:1 for gaming machines to gaming tables is adequate to cater to the indigenous population and tourist market.

34. Establishments where licenced gambling is permitted should be entitled to apply for intoxicating liquor licences.

The members of the Gaming & Leisure Association provided a broad range of views on this issue, some stating that an intoxicating liquor licence was a vital part of the experience sought by their customers, while others suggested that the mixture of intoxicating liquor and gambling was ill advised. Accordingly, we consider that the facility to obtain an intoxicating liquor licence should be available at the operator's discretion. Where an intoxicating liquor licence is granted, the operator should be obliged to adhere to the time restrictions applicable in any other public house which serves alcohol. Any failure to adhere to these time restrictions would only serve to encourage people, who otherwise may not be inclined to gamble, to visit casino venues for the purposes of obtaining alcohol. Also, in accordance with best practice in other jurisdictions, licenced casinos should not be permitted to provide intoxicating liquor for free or to sell below cost price.

LOTTERIES

35. There should there be a specific licence for gambling operators who offer betting products on the outcome of lotteries.

It is our understanding that many regulated jurisdictions do not permit operators to offer products on the outcomes of the National Lottery or the Euro Millions Lottery, accordingly this may be an issue best dealt with by the lottery regulator.

POOL BETTING

36. There should there be a specific licence for operators who offer pool betting or fantasy sports products.

All providers of gambling services should be properly licenced, so the public can have confidence that the operator is subject to the oversight of a regulator so that if they breach the terms and conditions of their licence they will be subject to administrative, and if necessary, criminal sanctions. A proper licencing regime also helps to prevent any criminal involvement in the sector.

GENERAL

37. In the context of regulating gambling in Ireland, what do you see as challenges in relation to future technological advances in the sector?

It is true to say that technology has been a disruptive influence on the gambling industry, undermining traditional regulatory tools available to legislatures, such as prohibition, geographical isolation, restrictions on opening hours, and ease of accessibility. Technological advances will continue to be sought where operators consider that it will enhance the

customer's experience by creating a heightened sense of excitement and satisfaction; where it can drive efficiencies and increase corporate revenues/profits; and where it can facilitate greater ease of access to enable higher volumes of gambling by individuals.

While it is useful to look to the future and try to anticipate further technological advances that may impact the provision of gambling services, just as the legislature of February 1956 failed to anticipate the invention of the first hard drive in September 1956 and the ultimate impact it might have on the gambling industry, we are best reminded 'not to let the imperfect be the enemy of the good'. As we await publication of the 3rd and most recent Governmental review of gambling in Ireland, we believe that affirmative action, even if imperfect, is now required as a matter of urgency.

38. How can the government adequately prepare for these challenges?

There will no doubt be challenges ahead for regulatory authority, however many of the foreseeable challenges have now been identified and can be dealt with. By building alliances with regulators in other jurisdictions and engaging in international cooperation agreements, it should be possible to establish robust oversight even over those entities which operate across international boundaries. Another 'tool' available to the legislature to guard against future challenges is to draft primary legislation which grants the regulator sufficient flexibility that they can manoeuvre and adjust to future challenges without having to depend upon mood of the legislature and political support to implement any necessary changes to the legislation.

REGULATORY

39. Is there anything that Ireland can learn from the regulatory regimes in other jurisdictions?

A review of other regulatory regimes confirms a fundamental point, namely that Government has a responsibility to regulate gambling in order to provide appropriate consumer protections and to highlight the potential dangers of problem gambling among their citizens.

The United Kingdom, by having a pre-existing regulator in place, was able to anticipate in a more timely fashion the evolutionary impact which technology was having on the gambling industry and introduced new update legislation accordingly in 2005.

Australia introduced the following measures:

- A statutory levy on the industry for the establishment of a social fund for the education, research and treatment of problem gamblers.
- A ban on 'in game' betting on live sporting events.
- A national self-exclusion register for problem gamblers.
- A ban on bookmakers offering customers a line of credit.

40. The regulatory regime that is introduced in Ireland should be flexible to enable regulation to keep pace with technological advances and customer expectations.

The GLAI agrees that the regulatory regime should be flexible so it can adapt and keep pace with technological advances and customer expectations.

MISCELLANEOUS

41. Do you have any other comments on the reform of Irish gambling legislation?

The Gaming & Leisure Association of Ireland recommends that provision be made in the legislation for a 'curfew' on the provision of gambling services between 4am and 7am by all licenced operators, both land-based and online. A curfew would provide a natural break from any tendencies towards excessive gaming both online and in land based venues. Any breach of this curfew would constitute a breach of the terms and conditions attaching to an operator's licence, and would therefore be subject to sanction by the regulator.

The first inter-departmental review of gambling commenced in October 2006 just as the phenomenon of online gambling was starting to become more widespread. Over the last decade online gambling has become all pervasive by successfully circumventing traditional regulatory measures such as prohibition, geographical isolation, opening times and ease of access. Despite the publication of a General Scheme for legislation to control rather than encourage gambling in July 2013, the Government decided to review its own General Scheme in 2018, the results of which have yet to be published. Accordingly, we conclude that the delays in drafting reform legislation lack substance on the basis that many of the underlying principles and the means to achieve the desired objectives of gambling legislation are long established in other regulated jurisdictions. Reform is long overdue.