



ICLG

The International Comparative Legal Guide to:

Gambling 2019

5th Edition

A practical cross-border insight into gambling law

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Ireland

Chris Bollard



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Matheson

1 Relevant Authorities and Legislation

1.1 Which entities regulate what type of gambling and social/skill gaming activity in your jurisdiction?

Relevant Product		Who regulates it in digital form?	Who regulates it in land-based form?
Gaming	Casino gaming (including slots and casino table games such as roulette & blackjack)	Not applicable.	Not applicable.
	Poker	Not applicable.	Not applicable.
	Bingo	Not applicable.	The District Court/An Garda Síochána (police).
Betting	Betting	The Revenue Commissioners.	The Revenue Commissioners.
	Sports/horse race betting (if regulated separately to other forms of betting)	The Revenue Commissioners.	The Revenue Commissioners.
	Fantasy betting (payment to back a 'league' or 'portfolio' selection over a period of time, for example in relation to sport or shares)	Not applicable.	Not applicable.
Lotteries	Lotteries	Regulator of the National Lottery; An Garda Síochána; or the District Court.	Regulator of the National Lottery; An Garda Síochána; or the District Court.
Social/Skill arrangements	"Social" gaming with no prize in money or money's worth	Not applicable.	Not applicable.
	Skill games and competitions with no element of chance	Not applicable.	Not applicable.

1.2 Specify: (i) the law and regulation that applies to the Relevant Products in your jurisdiction; and (ii) – in broad terms – whether it permits or prohibits the offer of Relevant Products to persons located in your jurisdiction.

Gaming

Casino-style games are regulated (and to a large extent prohibited) by the Gaming and Lotteries Acts 1956 to 2013 (the "**G&L Acts**"). Poker is also regulated by the G&L Acts as it falls within the definition of "gaming" as a "a game (whether of skill or chance or partly of skill and partly of chance) for stakes hazarded by the players".

Lottery products are also regulated by the G&L Acts, although the National Lottery is governed by the National Lottery Act 2013.

Section 43 of the Finance Act 1975 (as amended) regulates the operation of "gaming machines".

Sections 120–129 of the Finance Act 1992 regulate the operation of "amusement machines". "Amusement Machines" are defined under section 120 of the Finance Act 1992 as: "[a] machine which (a) is constructed or adapted for play of a game, and (b) the player pays to play the machine, and (c) the outcome of the game is determined by the action of the machine, and (d) when played successfully, affords the player an opportunity to play again without paying".

Betting

The Betting Acts 1931 to 2015 (the "**Betting Acts**") provide for a licensing scheme for the operation of a bookmaking business, which includes both online/offline bookmakers and betting intermediaries.

The Totalisator Act 1929 regulates the operation of tote (or "*pari-mutuel*") betting.

Lotteries

The National Lottery Act 2013 regulates the operation of the National Lottery (which is the largest lottery in the State).

Lotteries (aside from the National Lottery) are regulated (and to large extent prohibited) by the G&L Acts. Small lotteries or charitable lotteries are permitted where a permit or licence is obtained.

Social/Skill Arrangements

"Social games" which do not require a stake or are otherwise free to enter are more or less outside the scope of the current Irish legislation.

Skill games and competitions with no element of chance tend to generally fall outside the scope of the G&L Acts.

2 Application for a Licence and Licence Restrictions

2.1 What regulatory licences, permits, authorisations or other official approvals (collectively, “Licences”) are required for the lawful offer of the Relevant Products to persons located in your jurisdiction?

Gaming

Irish law does not currently provide for the licensing of casinos, and casino-style games are more or less prohibited by Irish law. Notwithstanding this, a number of casinos do operate in the Irish market as “private members’ clubs”.

Low stakes slots machines (“gaming machines”) and “amusement machines” may be made available to the public where an appropriate licence is obtained.

Betting

A bookmaker must obtain a bookmaker’s licence from the Revenue Commissioners in order to operate. There is (in principle) no limit to the number of licences that may be issued. The same can be said for remote bookmakers’ licences and remote betting intermediary licences.

A licence is required to operate a tote machine. Historically, only two totalisator licences have been issued. A totalisator licence is currently held by Tote Ireland Limited (a wholly owned subsidiary of State horse racing body, Horse Racing Ireland). Bord na gCon (the national greyhound board) holds a licence to operate a totalisator at greyhound tracks.

Lotteries

The National Lottery operator must obtain a licence to hold the National Lottery from the Irish Government. The operation of the licence itself is regulated by the Regulator of the National Lottery. The National Lottery is operated by a single licence holder and there is a competitive bidding process when the licence expires.

Small or charitable lotteries may be operated on the basis of permits or licences issued by An Garda Síochána or the District Court. There is no competitive tender/bidding process and no monopoly for small lotteries.

2.2 Where Licences are available, please outline the structure of the relevant licensing regime.

Gaming

An “amusement machine” licence is granted by the Revenue Commissioners for the public place specified in the application. Excise duty must be paid on the issue and renewal of a licence and the applicant must also produce a tax clearance certificate in accordance with the Finance Act 2002.

A “gaming machine” licence is applied for in a similar manner; the licensing body is the Revenue Commissioners. A gaming licence is required for each premises where a gaming machine is available for play.

Any individual or company may apply for an amusement machine or gaming machine licence.

Betting

Retail betting licences, remote betting licences and remote betting intermediary licences are issued by the Revenue Commissioners and may be applied for by any individual or company. In the case of a company, its “relevant officers” make the application on its behalf.

There is, in principle, no limit to the number of each of these licences that may be granted.

Before an application for such a licence can be made, applicants must first obtain appropriate certificates of personal fitness and tax clearance certificates.

Any individual or company may apply for a totalisator licence although note our comments above that, historically, only two totalisator licences have been issued. It is unlikely this position will change in the short term.

Lotteries

The National Lottery licence is awarded by the Irish Government on a 20-year term. The last such licence was granted in 2014. The awarding of this licence is subject to a competitive tender process.

A small lottery licence may be awarded by a District Court/An Garda Síochána. It is normally a requirement of such a licence that the lottery be run for charitable purposes.

2.3 What is the process of applying for a Licence for a Relevant Product?

Gaming

Irish law does not currently provide for the licensing of casinos. However, the G&L Acts prohibit public casinos and some operators have relied on this approach to operate private members’ clubs which operate as casinos/card clubs. The operation of such private members’ clubs, including opening hours and age restrictions, is unregulated except that anti-money laundering legislation applies to their activities and they are also subject to the usual taxation (including value-added tax). Most private members’ clubs require people to join as members before they can participate in any gambling.

Betting

If a bookmaker wishes to operate from a physical shop, it must first obtain a certificate of registration of premises in addition to the usual licence requirements (which are set out elsewhere in this chapter).

The process for applying for a remote bookmaker licence or a remote betting intermediary licence is different. At a high level, the application process can be described as follows. An applicant must first place an advertisement (in a prescribed form) in two national newspapers. Not less than 14 days after the advertisement is published, at least two “relevant officers” of the applicant must make applications for certificates of personal fitness. The applicant must then submit its licence application within 21 days of the issuance of the certificates of personal fitness. In addition to and in parallel with this, the applicant must also apply to the Revenue Commissioners for a tax number, obtain a tax clearance certificate and register for the payment of betting duties with the Revenue Online Service.

Lotteries

The Regulator of the National Lottery holds a competition regarding the grant of the National Lottery licence and the Minister for Public Expenditure and Reform may issue a direction to the Regulator regarding the terms of this competition. As noted above, the National Lottery is normally granted for a 20-year licence term (and the last such licence was granted in 2014).

A Garda Síochána Superintendent may issue permits for one-off small lotteries with prizes of up to €5,000 in total.

The District Court may issue a licence to a charity for periodic/recurring small lotteries with prizes of up to €30,000 per week. A licence is normally issued after a short hearing in the District Court.

2.4 Are any restrictions placed upon licensees in your jurisdiction?

Gaming

An amusement machine or gaming machine licence will be restricted to certain public places as set out in the licence and may contain restrictions within the licence.

Betting

The operation of a physical bookmaker's office is subject to a number of requirements contained in the Betting Acts. For example, there is a general prohibition on offering goods and services from a bookmaker's shop aside from bookmaking services and the sale of non-alcoholic drinks, newspapers, confectionery and fruit. The opening hours of bookmakers' shops are also regulated by statute and the licence holder may not permit overcrowding or loitering in the shops.

Accepting bets of less than €0.06 is prohibited for licensed bookmakers.

Section 16 of the Betting Acts sets out the circumstances under which a bookmaker's and/or remote betting intermediary licence may be revoked by the District Court (on the application of the Minister for Justice and Equality).

Lotteries

The National Lottery licence granted by the Irish State to the operator of the National Lottery contains conditions to which the operator is bound. The licence includes provisions relating to player protection mechanisms and governing unclaimed prizes, as well as the terms of the establishment of the National Lottery Fund. The licence itself can be reviewed on the Regulator of the National Lottery's website.

Small lotteries must not be for the personal benefit of the permit/licence holder. A licensed small lottery must also be for charitable purposes.

2.5 Please give a summary of the following features of any Licences: (i) duration; (ii) vulnerability to review, suspension or revocation.

Gaming

There are statutory maximum duration, review, suspension and revocation terms for an amusement machine licence. These are specified in each licence.

Betting

The timeline for remote betting/remote betting intermediary licence applications can be seen at question 2.3. For retail bookmakers, online bookmakers and remote betting intermediaries, licences are granted for up to 24 months ending on 30 November the following year (for retail bookmakers) or 30 June (for remote bookmakers and remote betting intermediaries). The amount of the fees payable for the annual renewal of the licences is based on the turnover of the bookmaker/betting intermediary. If a licence is not renewed, it will automatically expire.

The Betting Acts set out the grounds on which a licence can be revoked. By way of example only, a licence may be revoked where the Certificate of Personal Fitness of a relevant officer of the licence-holding entity is revoked. The licence holder may make representations and may appeal revocation to the High Court.

Lotteries

The current National Lottery licence was granted for a 20-year term in 2014.

The reasons for revocation of the National Lottery licence include, but are not limited to, the actions of the licence holder damaging the reputation of the National Lottery or of the State, a term of the licence being breached, or if the licence holder is not taking sufficient steps to prevent fraud regarding the National Lottery.

2.6 By Relevant Product, what are the key limits on providing services to customers? Please include in this answer any material promotion and advertising restrictions.

General Advertising and Broadcasting Rules

The Advertising Standards Authority for Ireland (the "ASAI"), which is an industry body that promotes and monitors compliance with advertising standards, includes a chapter on the promotion of gambling products in its Code of Standards for Advertising and Marketing Communications in Ireland.

The Broadcasting Commission of Ireland (the "BCI") is an independent statutory organisation which regulates broadcasting standards via its General Commercial Communications Code (the "Code"). The Code lays down standards with respect to all forms of commercial communication, including advertising and sponsorship. The Code states that it is acceptable to address commercial communications and to seek to promote betting services to those who wish to bet. In addition to this, the Code also provides that the address of the service provider and factual descriptions of the services available should be contained in such communications.

The Code does, however, prohibit a number of activities, including: anything that could be deemed an "encouragement to bet"; information detailing discounts, special offers, inducements to visit any betting establishment (including online); and references to betting odds available or any promotional offer intended to encourage the use of services of that nature.

Casino Gaming

The G&L Acts provide that a gaming activity will be illegal where it promotes or provides facilities for any kind of gaming: a) that by reason of the nature of the game, the chances of all the players, including the banker, are not equal; or b) in which any portion of the stakes is retained by the promoter or is retained by the banker otherwise than as winnings on the result of the play. The type of gaming described here is defined as "unlawful gaming" under the G&L Acts. The promotion (or assistance in promotion) of unlawful gaming is a breach of the G&L Acts.

Betting

A number of limits to the provision of betting services are provided in section 20 of the Betting Acts.

For example, section 20(1) provides that a retail bookmaker may not set up or maintain in or around his shop: "any attraction (other than the mere carrying on of his business of bookmaking) which causes or encourages or is likely to cause or encourage persons to congregate in or outside such premises". Section 20(3) prohibits a bookmaker from: "proclaim[ing] or announc[ing] or permit[ting] any other person to proclaim or announce in such premises to the persons there present the terms or odds on or at which he is willing to take bets in relation to any particular race, match, or other contest, or in respect of any competitor in any such contest".

In addition, section 20(4) prohibits a retail bookmaker from exhibiting (or permitting to be exhibited) in or outside his shop (or which is visible from the street): "any lists or statements of the terms or odds on or at which he is willing to take bets in relation to any particular

race, match, or other contest, or in respect of any competitor in any such contest, or lists or statements of the competitors entered for or withdrawn from or taking or likely to take part in any such contest, or statements of facts, news, or forecasts in respect of any such contest, or any other incitement or inducement to bet”.

Lotteries

The promotion of unlicensed lotteries is prohibited under the G&L Acts. Licensed lotteries must be carried out for a primarily charitable purpose and are subject to prize limits.

2.7 What are the tax and other compulsory levies?

A licence fee of €10,000 is payable on the initial issue of a licence for remote bookmakers and remote betting intermediaries. The fee payable for renewal of these licences is calculated based on annual turnover. This renewal fee ranges from €10,000 to a maximum of €500,000 (where annual turnover exceeds €500,000,000). A fee ranging from €10,000 up to a maximum of €200,000 (where annual turnover exceeds €200 million) is payable for remote betting intermediaries.

Betting duty of 1% is payable by bookmakers (including remote bookmakers).

Betting intermediary duty, which is currently 15% of “commission charges”, applies to remote betting intermediaries. The Finance Act 2002 (as amended) defines “commission charges” as: “the amounts that parties in the State to bets made using the facilities of a remote betting intermediary are charged, whether by deduction from winnings or otherwise, for using those facilities”.

Value-added tax is applied to supplies of eGaming services in Ireland on a point-of-consumption basis. Pursuant to the Council Directive 2006/112/EC (VAT Directive) and its implementing regulations (282/2011/EU), value-added tax is also likely to apply to gaming operators who are licensed outside of Ireland but accept Irish customers.

2.8 What are the broad social responsibility requirements?

Question 2.6 details some of the restrictions with respect to advertising and promotion. For the most part, however, Ireland’s gambling laws are silent in terms of social responsibility obligations. A notable exception to this is the National Lottery, which must be operated in a way that generates money for good causes and small local lotteries (which must have a primarily charitable purpose). National Lottery tickets must not be sold to people aged under 18 years. The engagement in a betting transaction with a person under the age of 18 years is also prohibited.

2.9 How do any AML, financial services regulations or payment restrictions restrict or impact on entities supplying gambling? Does your jurisdiction permit virtual currencies to be used for gambling and are they separately regulated?

Ireland implements European anti-money laundering legislation and is due to shortly transpose the Fourth Anti-Money Laundering Directive via the Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Bill 2018.

The Central Bank of Ireland is reviewing the use of virtual currencies across the economy. Aside from e-money, virtual currencies are currently unregulated in Ireland.

3 Online/Mobile/Digital/Electronic Media

3.1 How does local law/regulation affect the provision of the Relevant Products in online/mobile/digital/electronic form, both from: (i) operators located inside your jurisdiction; and (ii) operators located outside your jurisdiction?

For the most part, Irish law has not generally been updated to take account of the internet. The G&L Acts apply to gambling products in general (i.e. casino or lottery-style games) and therefore apply equally to online gambling, though they have not been updated to take online gambling specifically into account.

Online gambling products are often provided to Irish consumers by operators who are lawfully licensed in other jurisdictions. Taking into account the potential application of Irish consumer protection law, such operators normally seek to ensure that consumer contracts are not governed by Irish law and that such contracts are executed and performed outside of Ireland. In addition, the G&L Acts will apply to those operators and it is important for them to be mindful of the rules surrounding the promotion and advertising of unlawful gambling products.

The Betting Acts were updated in 2015 in order to regulate and license betting services and betting intermediary services which are delivered remotely. The Betting Acts define “remote” as “any electronic means” which includes the internet, telephone and telegraphy (including wireless telegraphy). Therefore, a licence is required for all those who wish to provide remote bookmaking or remote betting intermediary services to customers in Ireland.

3.2 What other restrictions have an impact on Relevant Products supplied via online/mobile/digital/electronic means?

Under the Betting Acts, it is unlawful to provide a service that would “enable” an unlicensed bookmaker or unlicensed betting intermediary to have access to or use any internet address or any internet domain for the purpose of providing remote bookmaking or betting intermediary services. The scope of this provision is untested in court at the time of writing.

Under the Betting Acts, the Revenue Commissioners are charged with the enforcement of these provisions.

3.3 What terminal/machine-based gaming is permitted and where?

The Finance Act 1975 (as amended) governs the provision and licensing of “gaming machines”. See question 1.2. Section 4(1) of the 1956 Act prohibits the promotion or provision of facilities for gaming on slot machines.

Fixed-odds betting terminals (FOBTs) are uncommon in Ireland (certainly among the main high-street operators). Although their legality has been not been tested in the courts, they are generally regarded as an unlawful form of gaming and there seems to be very little political will to introduce or regulate them.

4 Enforcement and Liability

4.1 Who is liable under local law/regulation?

Under section 32D of the Betting Acts, it is possible for a prosecution

to be taken against any person including a “director, manager, secretary or other officer” of a company where the company has breached the Betting Acts “with the consent or connivance” of the person in question. Section 45 of the G&L Acts contains a similar provision.

The operator of the National Lottery must be a company and this company is primarily responsible for breaches under the National Lottery Act 2013. Under the 2013 Act, the main sanctions are monetary fines, which will be imposed on the operator company.

4.2 What form does enforcement action take in your jurisdiction?

The Irish Revenue Commissioners actively police the market to ensure that the appropriate tax is being remitted and, in the case of bookmakers, that the appropriate licences are in place.

4.3 Do other non-national laws impact upon liability and enforcement?

The law of the European Union applies in Ireland and is constantly developing. The law on the free movement of services within the EU is particularly important in this context. European consumer protection laws or “conflict of law” regulations may also be relevant.

4.4 Are gambling debts enforceable in your jurisdiction?

Gambling debts are not enforceable in Ireland. Per section 36 of the G&L Acts: “every contract by way of gaming or wagering is void”, and “no action shall lie for the recovery of any money or thing which is alleged to be won or to have been paid upon a wager or which has been deposited to abide the event on which a wager is made”.

The recent case of *Sporting Index Limited v John O’Shea* [2015] IEHC 407 discussed the enforceability of gambling debts. In the case, the Irish High Court found that a UK-based spread betting operator called Sporting Index could not enforce a gambling debt owed to it by an Irish resident, Mr. O’Shea, as to do so would be contrary to the clear intent of the G&L Acts.

The unenforceability of gambling debts is reciprocal as between betting operator and customer, meaning a customer cannot sue an operator who refuses to pay a gambling debt. There is, however, a deterrent in place for betting operators (including betting intermediaries) who refuse to pay out: when an operator applies for renewal of its licence, it must be certified as being a “fit and proper person” by the Minister for Justice and Equality. When considering fitness, one consideration that may be taken into account by the Minister is whether the operator “unreasonably refuses or refused to pay sums due to persons who won bets made with [it]”. Therefore, should the operator refuse to pay out gambling debts, this could result in the refusal of the Minister to certify fitness and ultimately in the loss of the licence.

A proposal to make gambling contracts enforceable (in most circumstances) is currently contained in the heads of the Gambling Control Bill (discussed in more detail below).

to reform Ireland’s gambling laws was released. The draft heads referred to the bill as the “Gambling Control Bill” (the “Bill”). The Bill has not made significant progress through the legislative process since its initial publication, although at the time of writing, the Bill is on the Government’s published legislative agenda and is currently being further updated.

It is difficult to predict with any great certainty what the Bill will look like if and when it is finally passed. Based solely on the draft heads of Bill, we would expect that new legislation in this area would at least cover the following:

A New Regulator

The Bill proposes to bring all forms of gambling under the supervision of a dedicated gambling regulator – the Office of Gambling Control, Ireland (the “OGCI”). This in and of itself would be a significant reform of the law, as currently the closest that Ireland has to a gambling regulator is the Revenue Commissioners (which has the authority to issue certain licences, most notably, bookmakers’ licences) as well as the District Courts and the Gardaí Síochána (which have the power to issue local lottery licences).

A New Licensing Regime

The OGCI would oversee a new licensing regime incorporating 43 categories of gambling licence or registration. For the first time, it would be possible to apply for a licence to operate a land-based casino (though there is a proposal to cap the number of such licences). It is also proposed to introduce a licensing regime for operators who wish to offer gambling products (such as casino-style games) to Irish customers. The Bill specifically excludes the operation of the Tote from its provisions, but it does provide for the licensing of pool betting products.

Player Protection

The Bill would introduce player protection measures (a feature which is somewhat lacking from the current Irish law on gambling products). Specifically, there would be an obligation on operators to report suspicious betting patterns, a prohibition on the offering of credit and the introduction of “player cards”. The precise functionality of the “player cards” is unclear at this point. Certain games may be prohibited on public policy grounds and the Bill reiterates the Government’s intention to retain the ban on fixed online betting terminals.

Gaming and Lotteries (Amendment) Bill

In advance of any progress being made by the Bill, the Government has separately proposed some piecemeal changes to the G&L Acts, which were previously in the form of the draft Courts and Civil Law (Miscellaneous Provisions) Bill 2017 (the “Misc Provisions Bill”). The Misc Provisions Bill sought to reform and update the regime governing small or local lotteries. In particular, the Misc Provisions Bill sought to clarify the basis on which a charitable lottery licence may be obtained, increase stake and prize limits and standardise the age limits for entry. In May 2018, it was confirmed that these proposals would instead be contained in a separate Gaming and Lotteries (Amendment) Bill, which is yet to be published.

5 Anticipated Reforms

5.1 What (if any) intended changes to the gambling law/regulations are being discussed currently?

Anticipated Reforms

It is widely acknowledged that Ireland’s gambling laws are outdated and overdue for reform. In July 2013, the draft heads of a new bill

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Chris is a partner in the Technology and Innovation team of Matheson, one of Ireland's leading law firms. Chris advises clients on a host of gambling issues including licence applications, regulatory advice and white-labelling agreements. Chris regularly writes and speaks about gambling issues.

**Deirdre Kilroy**

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For over 15 years Deirdre has advised international and large national entities on gaming, gambling and lotteries activities, online, physical and remotely delivered. Not only does she understand the licensing regime applicable to remote operators, but also appreciates how the legislation dating from the 1930s and 1950s applies to today's bookmakers, other operators, affiliates and service providers. Clients value her pragmatic approach and her ability to help clients model their offerings and agreements in a compliant, business-friendly manner.

Matheson's Betting and Gaming team is one of the leading specialist practices in this area in Ireland. We offer expert advice to operators in this space in relation to licensing, regulatory advice, taxation, e-commerce, commercial contracts, advertising and IP structures. Our partners have worked with many of the leading names in the gaming and betting sectors. Our betting and gaming clients work with us on transactions, disputes, tax and projects because of our ability to cut through complexity and to mitigate risk.

Our experience ranges from advising traditional retail bookmakers and private members' clubs/casinos in relation to their operations in Ireland, to advising large multinational online gaming operators providing remote and non-traditional online gaming and betting services to Irish consumers.

We also assist businesses in Ireland with using lotteries as a tool in marketing promotions and competitions in a compliant manner.

Current titles in the ICLG series include:

- Alternative Investment Funds
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