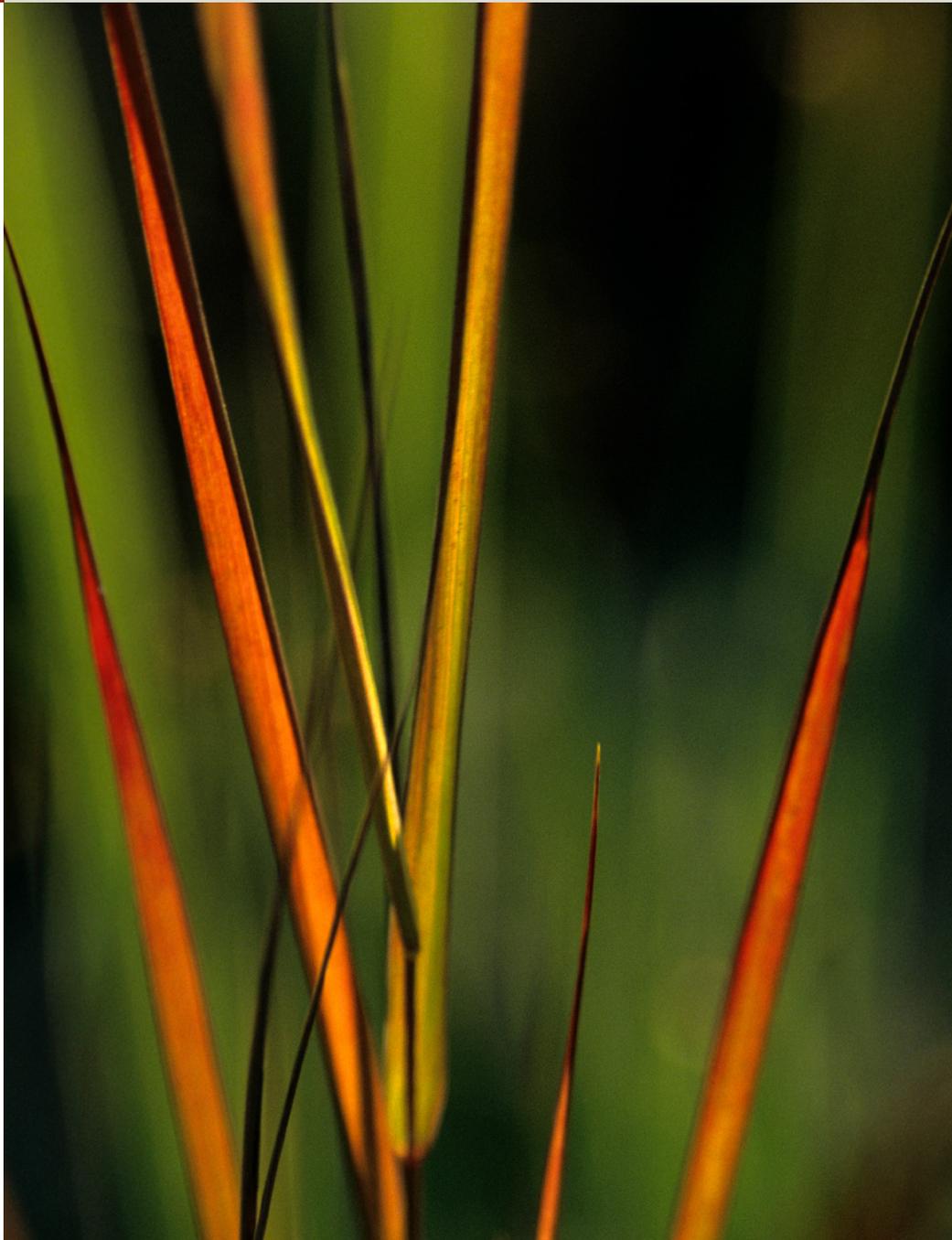


10 Things You Need to Know About the Gambling Control Bill 2013

BRIEFING



10 Things You Need to Know About the Gambling Control Bill 2013

(continued)

Background and Introduction

The general scheme of what the heads of the Gambling Control Bill 2013 (the “**Scheme**”) would look like was first published on 15 July 2013. The intent of the Scheme was that it would, if enacted, provide a comprehensive overhaul of Ireland’s outdated gambling laws and would result in most forms of gambling being regulated by a single piece of legislation.

Since the initial publication of the Scheme in 2013, limited progress has been made. However, a number of recent high profile cases involving prominent sportspeople and gambling addiction, coupled with increased public concern about children under 18 engaged in gambling activities, has led to an increased political desire to implement legislation to give effect to the Scheme.

If legislation is enacted to give effect to the proposals outlined in the Scheme, it will result in a fundamental change in gambling law and regulation in Ireland.

In this article, we consider 10 things that operators should be aware of in relation to the Scheme.

1. Current Status of the Scheme

The Scheme that was published in 2013 has no legal effect as it merely contains the general scheme of what the heads of the Gambling Control Bill (the “**Bill**”) may look like. As a result, significant further work will be required before the Bill is published and subsequently enacted.

The Bill is currently being considered and drafted by the Office of the Parliamentary Counsel and the current government is keen to proceed with the Bill “...at the earliest feasible opportunity”.¹ In Irish parliamentary debates in December 2016, the Minister of State for Justice David Stanton hinted that the Bill would be published “later in 2017”.

Given the level of work that is entailed in producing a piece of legislation of this nature, the government has asked the Department of Justice and Equality to identify whether there are any areas of concern that are intended to be captured by the Bill which can be dealt by separate legislation. It is not clear at this stage what (if any) areas have been identified, but we understand that the government is considering separate legislation to address underage gambling.

2. Interaction with the Betting (Amendment) Act 2015

The Betting (Amendment) Act 2015 (the “**Act**”), which came into operation on 15 April 2015, brought online bookmakers and betting intermediaries (ie betting exchanges) within the scope of the licensing and tax regime which had, until the passing of the Act, previously only applied to land-based bookmakers.

The Bill, once enacted, will become the primary legislation which will govern the licensing and regulation of land-based and remote bookmakers and betting exchanges. Existing licences that have been granted under current legislation will continue in force until they first fall for renewal after the Bill has been enacted, following which operators will be able to apply for a licence under the new regime (discussed further below).

Accordingly, the Act will continue to function as an interim solution until the Bill is enacted, following which land-based and remote bookmakers and betting exchanges will become subject to the more detailed requirements of the Bill.

3. Creation of the Office for Gambling Control Ireland (OGCI)

The Scheme provides for the creation of a new gambling regulator, Office for Gambling Control Ireland (the “**OGCI**”). The OGCI will control all gambling in Ireland and will have responsibility for issuing licences and ensuring compliance

¹ Per written parliamentary response of the Minister of State for Justice David Stanton in response to written query from Fianna Fail TD Anne Rabbitte on 16 December 2016.

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with the Bill. The OGCI will be established as a unit of the Department of Justice and Equality and will be funded from licensing fees (amounts to be determined by OGCI).

The establishment of a bespoke regulatory body for the gambling industry is a welcome development. For the OGCI to be effective, it is important that it is operational well in advance of the enactment of the Bill. The OGCI will require sufficient time and resources to be in a position to establish the detailed framework of licence conditions, technical standards and guidelines that will be required by operators to ensure compliance with the new regulatory regime once it comes into effect.

In addition, two key considerations for the effectiveness of the OGCI are (a) that it is appropriately funded and (b) that it has the requisite resources. Whilst the Scheme anticipates that the OGCI will be funded from licensing fees, the Scheme is currently silent on the amount of the licensing fee. However, licensing fees alone may not be sufficient to ensure that the OGCI has the resources required to be an effective regulator. By way of example, the United Kingdom Gambling Commission (equivalent regulatory body to the OGCI in the United Kingdom) has 290 staff and running costs of approximately stg£19.5M per year.²

4. Scheme Creates a Complex Licensing System

The Scheme seeks to regulate everything from retail and online betting and gaming, to gaming on cruise ships and in catering outlets. Although the Scheme outlines 6 broad categories of licence (betting, gaming, remote gaming and betting, temporary, hybrid and personal licences), there are a total of 43 separate licences which operators could potentially require. In addition, there are a number of entities which, whilst not requiring a licence, may be required to register with the OGCI.

Regulating for all forms of gambling in the one Bill, potentially makes the legislation more complex and could lead to delays in finalising the Bill. Several submissions that were made to the Department of Justice and Equality in response to the publication of the Scheme have called for the streamlining of the proposed licensing system and there may be merit in the government seeking to deal with the main forms of gambling first (eg retail and online) and then separately bringing in legislation at a later date to deal with other areas.

5. Restrictions on Advertising, Promotions and Sponsorship

Of particular relevance to operators will be the fact that the Scheme proposes significant restrictions on the ability of operators to advertise/promote their services in Ireland. Specifically, the Scheme proposes that;

- a) only licensed operators may advertise gambling services to Irish players;
- b) the Minister for Justice and Equality (the “**Minister**”) will have the power to ban advertising before the watershed;
- c) advertisements may not feature people considered to be “idols” by young people;
- d) where operators are allowed to advertise around sporting events, then only advertisements that are specific to that sporting event are allowed;
- e) restrictions will apply to the type of promotions that operators may offer to customers; and
- f) operators will not be allowed to sponsor events or teams “...who predominantly appeal to people below the age of 18 years.”

Given the global nature of the betting and gaming industry and the multiple advertising media that operators use to advertise their products, it may be difficult for the OGCI to enforce some or all of these restrictions, particularly in the case of remote operators.

² Figures taken from the Annual Report and Financial Statements of the UK Gambling Commission for year ended 31 March 2016.

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The inclusion of advertising restrictions in primary legislation is potentially inflexible as it may make the rules more difficult to amend/adjust in the event that changes are needed. It may therefore be more suitable to seek to deal with these restrictions in a code of practice that can be reviewed/updated by the OGCI on an on-going basis.

6. Gaming to be allowed in Betting Shops

In what will be a welcome development for most land-based bookmakers, for the first time the Scheme would allow betting shops to have gaming content provided that turnover from the gaming content does not exceed 15% of total turnover. Clarification will be required as to the treatment of “virtual” products as currently the definitions of “gaming” and “betting” both include virtual events. For the most part, betting on virtual events will be regarded as a fixed odd bet by operators and therefore confirmation that this treatment will continue will be required to ensure that “virtual” content in shops is not indirectly caught by the 15% restriction on turnover that will apply to gaming content.

The Scheme prohibits Fixed Odds Betting Terminals (“**FOBTs**”) in all circumstances and sets out a number of offences for the supply, maintenance and repair of FOBTs.

7. Scheme Legislates for Land-Based Casinos and New Categories of Lotteries

Casinos

The Scheme legislates for casinos and casino games, thereby addressing the currently ambiguous position of “private members clubs”.

However, the Scheme will not permit super-casinos in Ireland. The Scheme provides for a maximum limit of 40 casino licences that can be in operation at any one time in Ireland and limits the number of tables in casinos to a maximum of 15 and gaming machines to 25. Criteria will be established by the OGCI on the distribution of casinos geographically (nationally and regionally) to ensure reasonable access and choice for consumers. Planning permission will also be required for each premises and the location of casinos will be subject to public

policy restrictions. Normal liquor licensing requirements and bar hours will apply.

In addition the Scheme allows the OGCI to specify that certain games which are played on machines or by remote means can only be paid via a “player card”. The practicalities of how this will work are unclear from the Scheme.

Lotteries

The Scheme does not affect the National Lottery but does introduce several new categories of licences for lotteries that apply at least 25% of their proceeds to charitable or philanthropic causes.

8. Enhanced Player Protection Measures

The Scheme contemplates increased player protection measures including the following;

- a) increased obligations on operators to prevent underage gambling;
- b) credit facilities cannot be extended to customers;
- c) bets now to be treated as enforceable contracts save where the bet is entered into by a minor;
- d) the Minister can prohibit or restrict certain games, or classes of game, or a particular machine or piece of equipment, where justified by public policy;
- e) it will be a licence condition that all staff are properly trained and key personnel will require a “personal licence”;
- f) a social fund is to be established and paid for based on an operator’s turnover. The social fund would be used to provide public education and awareness-raising programmes, the commissioning or undertaking of research, and assistance in establishing and operating treatment programmes for individuals affected by irresponsible gambling; and
- g) a voluntary self-exclusion register will be established whereby a person with a gambling concern can have themselves

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excluded from specific gambling venues, or from accessing gambling products provided by particular providers. The OGCi would maintain a register of all persons who have entered into self-exclusion arrangements. The mechanics of how such a scheme will work will need to be worked through carefully as the enforcement of such a register by operators could create serious challenges for operators particularly in the retail environment.

9. Lack of Clarity On Taxes That Will be Payable On Gambling Revenue

The Scheme is unclear as to the nature of the taxes and duties that will apply to betting and gaming activities following the implementation of the Bill. Currently a 1% turnover tax applies to bets taken from Irish customers by retail and remote bookmakers. In addition, a 23% VAT charge applies to gaming revenue supplied electronically to Irish customers.

It is anticipated that these taxes would continue to apply once the Bill is enacted. However, it is noted that the Scheme also suggests the potential for licence fees and a social fund (based on turnover) to be also applied. In this regard, it will be important for operators that whatever duties/taxes are levied that they are set at a combined rate that is sustainable.

10. Enforcement

The Scheme provides for the imposition of civil and criminal penalties on operators and designated officers who are in breach of the Bill when enacted. In addition, the OGCi will have the power to impose ISP and financial transaction blocking and court orders may be obtained to include restrictions on advertising, payment services and freezing of accounts.

For the regulation to be effective, it will be important that the OGCi has the relevant resources available to be able to actively pursue those operators who decide to breach the relevant regulations.

Conclusion

The Scheme demonstrates Ireland's intention to move towards a more robust and modern regulatory regime for all forms of gambling in Ireland. The Scheme requires significant additional work before the government is in a position to publish the Bill. However, there appears to be an increased political desire to implement legislation to give effect to the Scheme and that the government is working to get the Bill published, and subsequently enacted, "at the earliest feasible opportunity".

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