



# ICLG

The International Comparative Legal Guide to:

## Gambling 2018

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A practical cross-border insight into gambling law

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**Publisher**  
Rory Smith

**Published by**  
Global Legal Group Ltd.  
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# Ireland



Chris Bollard



Deirdre Kilroy

## Matheson

### 1 Relevant Authorities and Legislation

#### 1.1 Which entities regulate what type of gambling activity in your jurisdiction?

Ireland does not currently have a single gambling regulator and so responsibility for regulating or licensing products is shared between a number of public bodies.

In addition to its function of collecting betting taxes, the Revenue Commissioners (the Irish tax authority) is the body responsible for granting licences to both online and offline bookmakers and remote betting intermediaries.

Before an application for a licence may be made to the Revenue Commissioners, a prospective bookmaker or betting intermediary (or the relevant officers of the applicant in the case of a company) must first obtain and hold certificates of personal fitness. For Irish-based applicants, applications for certificates of personal fitness are made to the Superintendent of An Garda Síochána (the Irish police force). For overseas applicants, such applications are made to the Department of Justice and Equality.

Low-stakes “*gaming machines*” are permitted, provided a licence is held by the operator. This licence may also be obtained from the Revenue Commissioners.

A very limited number of low-stakes games may take place in “*Amusement Halls and Funfairs*” where an appropriate licence is held. This licence may be obtained from a local authority or a local District Court.

The Office of the Regulator of the National Lottery regulates the National Lottery. In addition to this, small-scale or local lotteries carried out primarily for a charitable purpose, may also be allowed to operate, provided they have a permit to do so granted by a Superintendent of An Garda Síochána or a licence granted by a District Court.

The Revenue Commissioners also have the power to grant licences to operate totalisator (or “*pari-mutuel*”) betting.

#### 1.2 Specify all legislation which impacts upon any gambling activity (including skill, prize competitions and draws, fantasy, egaming and social games), and specify in broad terms whether it permits or prohibits those activities.

Casino-style games and lotteries (excluding the National Lottery) are regulated (and to a large extent prohibited) by the Gaming and Lotteries Acts 1956 to 2013 (the “**G&L Acts**”).

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

The National Lottery Act 2013 regulates the operation of the National Lottery. The National Lottery is operated by a single licence holder.

Section 43 of the Finance Act 1975 (as amended) regulates the operation of gaming machines. Slot and gaming machines also fall within the ambit of the G&L Acts.

Sections 120–129 of the Finance Act 1992 regulate the operation of “*amusement machines*”. A permit is required to make these available to the public. Excise duty must be paid on the issue and renewal of a permit and the applicant must also produce a tax clearance certificate in accordance with the Finance Act 2002. “*Amusement Machine*” is 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*”.

The Totalisator Act 1929 regulates the operation of tote (or “*pari-mutuel*”) betting. Historically, only two totalisator licences have been issued (one to Horse Racing Ireland and one to Bord na gCon).

### 2 Application for a Licence and Licence Restrictions

#### 2.1 Who can apply for a licence to supply gambling facilities?

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 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.

Totalisators may be operated where a licence has been granted under the Totalisator Act 1929. 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.

The National Lottery is operated by way of a 20-year licence that grants a monopoly to the holder. The current licence is held by Premier Lotteries Ireland Limited. In addition, small-scale lotteries carried out primarily for charitable purposes are permitted by a licence that may be awarded by the District Court or a permit which may be granted by a Superintendent of An Garda Síochána. Usually applications for these sorts of licences/permits are applied for by individuals for and on behalf of a charitable organisation.

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## 2.2 Who or what entity must apply for a licence or authorisations and which entities or persons, apart from an operator, need to hold a licence? Are personal and premises licences needed? Do key suppliers need authorisation?

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“Key suppliers” (such as software suppliers) currently do not require a licence or other authorisation.

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).

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## 2.3 What restrictions are placed upon any licensee?

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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, confectionary 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 licenced bookmakers. The engagement in a betting transaction with a person under the age of 18 years is also prohibited.

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).

The 20-year National Lottery licence granted by the Irish state to the operator of the National Lottery contains conditions which the operator of that licence is bound to. The licence includes provisions relating to player protection mechanisms and provisions 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.

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## 2.4 What is the process of applying for any gambling licence or regulatory approval?

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### Remote Bookmakers/Remote Betting Intermediaries

The process for applying for a remote bookmaker licence or a remote betting intermediary licence is very similar. 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 certificates of personal fitness issuing. 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.

### Casinos

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

### Lottery Licences

The District Court may issue licences for small lotteries. A licence is normally issued after a short hearing in the District Court. All such small lottery licences must primarily have a charitable purpose.

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## 2.5 Please give a summary of applicable time limits and potential for expiry, review revocation and nullification.

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The timeline for remote betting/remote betting intermediary licence applications can be seen at question 2.4. 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.

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

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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.

**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.

**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.

**Retail Bookmakers:** 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*”.

## 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).

## 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.

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 The Restrictions on Online Supply/Technology Support/Machines

### 3.1 Does the law restrict, permit or prohibit certain online activity and, if so, how?

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 applies 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 have recently been updated in order to regulate and license betting services and betting intermediary services which are delivered remotely. The Betting Acts defines “*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 online supplies?

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 their 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 questions 1.2 and 2.4. 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 for breaches of the relevant gambling legislation?

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 is the approach of authorities to unregulated supplies?

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).

## 5 Anticipated Reforms

### 5.1 What (if any) intended changes to the gambling legislation/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 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.

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 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).

#### ■ 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.

#### ■ Courts and Civil Law (Miscellaneous Provisions) Bill 2017

In advance of any progress being made by the Bill, the government has separately proposed some piecemeal changes to the 1956 Act in the form of the draft Courts and Civil Law (Miscellaneous Provisions) Bill 2017 (the “*Misc Provisions Bill*”). The Misc Provisions Bill seeks to reform and update the regime governing small or local lotteries. In particular, the Misc Provisions Bill would clarify the basis on which a charitable lottery licence may be obtained, increase stake and prize limits and standardise the age limits for entry.

**Chris Bollard**

Matheson  
70 Sir John Rogerson's Quay  
Dublin 2  
Ireland

*Tel:* +353 1 232 2273  
*Email:* [chris.bollard@matheson.com](mailto:chris.bollard@matheson.com)  
*URL:* [www.matheson.com](http://www.matheson.com)

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**

Matheson  
70 Sir John Rogerson's Quay  
Dublin 2  
Ireland

*Tel:* +353 1 232 2331  
*Email:* [deirdre.kilroy@matheson.com](mailto:deirdre.kilroy@matheson.com)  
*URL:* [www.matheson.com](http://www.matheson.com)

Deirdre is recognised as one of Ireland's leading IP, technology and data privacy specialists. Many of the commercial contracts that Deirdre has worked on are complex. She has experience with large outsourcing projects, technology supply agreements and patent licences, particularly for clients in the technology, data, life sciences and pharma sectors. Much of her work involves advising businesses how to model and conclude contracts, with IP or business transformation at their heart. She works on international tax projects involving significant IP and technology assets. Deirdre also advises on confidentiality, trade secrets, advertising, ecommerce and consumer protection.

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 multi-national 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.

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- Mergers & Acquisitions
- Mining Law
- Oil & Gas Regulation
- Outsourcing
- Patents
- Pharmaceutical Advertising
- Private Client
- Private Equity
- Product Liability
- Project Finance
- Public Investment Funds
- Public Procurement
- Real Estate
- Securitisation
- Shipping Law
- Telecoms, Media & Internet
- Trade Marks
- Vertical Agreements and Dominant Firms



59 Tanner Street, London SE1 3PL, United Kingdom  
Tel: +44 20 7367 0720 / Fax: +44 20 7407 5255  
Email: [info@glgroup.co.uk](mailto:info@glgroup.co.uk)

[www.iclg.com](http://www.iclg.com)