



GAMING AND GAMBLING

Betting (Amendment) Act 2015 – Six Months On - What Has Happened?

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Over six months have passed since the Betting (Amendment) Act 2015 (the Betting Act) came into force.

A person that accepts or facilitates bets from Irish customers by remote means must hold the relevant remote licence and pay the appropriate betting duty, regardless of whether that person has a physical presence in Ireland, or not.

As of 2 March 2016, forty licences were issued to remote bookmakers, including Paddy Power, Bet365 and William Hill, and eight licences were issued to betting intermediaries, including Betfair and Ladbrokes. We have assisted clients apply for and secure licences pursuant to the Betting Act, and while the legislation contains some anomalies and ambiguities, the authorities processing applications have generally taken a pragmatic approach to interpretation.

The EU gambling market is estimated at around €84.9 billion and grows at an annual rate of around 3% according to the European Commission. Online gambling is growing particularly fast with around 6.8 million consumers and an annual growth rate of almost 15% in the EU. Annual revenues in 2015 were estimated by European Commission to be in the region of €13 billion compared to €9.3 billion in 2011 in the EU's online gambling market. This represents a total growth rate of almost 40% over the four years. The economic significance of the sector is illustrated by the increasing amount of tax revenues generated in EU Member States, and this is an area which Ireland seeks to capitalise upon through its licence regime.

Remote Bookmaker's Licences and Remote Betting Intermediary Licences

There are two types of remote licence provided for under the Betting Act:

1. a remote bookmaker's licence for operators offering remote betting to customers based in Ireland; and
2. a remote betting intermediary's licence for operators who facilitate Irish customers making bets (i.e. betting exchanges).

It is an offence to operate as a remote bookmaker or a remote betting intermediary without a licence. The penalty for operating without a licence is fine of up to €150,000, for a first offence; €300,000 for subsequent offences, or imprisonment for up to five years, or both a fine and imprisonment. Where a prosecution is brought and an operator fails to appear before the Irish courts, the trial may proceed in the operator's absence, as though the party had entered a plea of not guilty.

Third parties dealing with remote operators should be vigilant and ensure that those remote operators have the appropriate licence – otherwise they may have to deal with prosecution and penalties. The Irish Revenue Commissioners have the power to issue compliance notices to third parties who provide facilities or services to unlicensed remote operators such as advertising or internet services that would assist the unlicensed operator to carry on its business. Failure to comply with a compliance notice is an offence and can lead to a fine of up to €50,000.

Betting Duty and Betting Intermediary Duty

Remote bookmakers are now liable to a 1% turnover based betting duty, which applies in relation to every bet entered into with persons in Ireland. Remote betting intermediaries are also liable to betting duty at a rate of 15% on all commission received. Commission refers to the amount levied on Irish-based customers for using the facilities of a remote betting intermediary, generally, through a deduction from winnings.

The extension of betting duty to remote bookmakers and betting intermediaries is expected to raise some €25 million each year for the Exchequer.

A similar system applies in the UK where remote operators are also charged a betting duty, but that regime is currently under scrutiny. The imposition of the duty was challenged by The Gibraltar Betting and Gaming Association Limited on the basis that it conflicts with one of the fundamental principles of EU law – the freedom to provide services. The matter was referred to the Court of Justice of the European Union on 12 November 2015 (Case C-591/15), but the case has not yet been considered. The outcome of the case will be of interest to online operators liable to Irish betting duty and to the Irish authorities for enforcing the laws.

About the Author