

Options for Regulating Gambling



*An Roinn Dlí agus Cirt agus Athchóirithe Dlí
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1 Introduction

1.1 This document, *Options for Regulating Gambling*, arises from the public consultation launched by the Minister in May 2009 into the reform of our gambling laws. The need to examine our current regulatory architecture for gambling is fully accepted. No-one would doubt that our existing Gaming and Lotteries Act, 1956 and our Betting Act, 1931 – the principal foundation stones of our gambling legislation – require significant overhaul. The document also takes as its starting point the publication of the Report of the Casino Committee, *Regulating Gaming in Ireland*, which examined the case for strictly regulating casinos in the State.

1.2 The document is aimed at being as consensual as possible, so as to pave the way for the introduction of legislation to improve the regulation of gambling. One of the important objectives would be to arrive at a renewed gambling architecture that:

- is capable of attracting broad support,
- is cognisant of the societal, technological and other changes that have taken place in recent times,
- is conscious of the potential for harm that problem and compulsive gambling can cause;
- recognises, with new technologies, how gambling crosses frontiers with ease, but is, at the same time, a policy capable of being implemented effectively.

1.3 In that event this document, *Options for Regulating Gambling*, offers a certain roadmap in terms of best regulatory practice. The aim of the document is to suggest a legislative vehicle that would be a modern, responsive code that recognises the fact that some people gamble and enjoy gambling and at the same time acknowledge that there are inherent dangers involved that need to be addressed, not least in terms of problem gambling. Three important considerations, which characterise most well-regulated gambling codes, will set the hallmark of any new gambling regulation. These are:

- ✓ that young people and the vulnerable are protected,
- ✓ that gambling should in all respects be fairly and openly conducted, and
- ✓ that gambling is kept free of crime.

1.4 The Government, at its meeting on 19 February 2008 noted the contents and recommendations of the Report of the Casino Committee - *Regulating Gaming in Ireland*. That Report made a series of recommendations that contained significant public policy implications which required further consideration before the Government should be asked to make a formal decision on introducing any new regulatory regime in the gaming area. A proposal was advanced to publish the Report and to establish an Informal Cross-Party Committee, to be called the All-Party Committee to Review Gaming in Ireland to consider the Report and related matters.

1.5 The Minister published the Report on 10 July 2008. Agreement on the establishment of an Informal Cross-Party Committee was not, however, forthcoming and consequently the Minister decided to undertake from within his Department a major review of gambling. The objective of the review was to provide options for a new and comprehensive legal and organisational framework governing the gambling architecture in the State. This document, *Options for Regulating Gambling*, is based on the outcome of the consultation phase of the review of gambling as well as the material contained in the Report of the Casino Committee, entitled *Regulating Gaming in Ireland*. More than 70 interested parties made written submissions, many of which were followed up with one or more face-to-face meetings.

1.6 It was always the proposition that the review would lead to options for a new architecture for *gaming* in Ireland - at issue was perhaps the scale of change that would be required. The review process received its initial impetus from a consideration as to whether casinos should be permitted in the State under strict regulation. It was clear from the start, however, that, in a modern gambling environment, different forms of gambling no longer stand alone but are often delivered as a package. This is certainly true in the on-line environment, where a customer can place a bet (even lay a bet), play in a poker room, or play casino games - and all with the same company, and virtually at the same time. This matter was given greater focus by the fact that some major off-shore companies indicated (in discussion with Ministers) that Ireland represented an attractive place to locate significant aspects of their operations, provided the regulatory environment was up to best international standard and, crucially, the taxation environment was suitably attractive.

1.7 The issue of betting duty tax foregone through the rising popularity of phone and online betting (generally through entities licensed off-shore) also intervened. The Minister for Finance had deferred an increase in betting duty from 1% to 2% pending an examination by his officials, in conjunction with the industry, of the scope to include bets placed with offshore entities in the tax net. The approach of widening the tax base is supported by the Horse and Greyhound sectors that benefit directly from the duty. Support for horseracing or the bloodstock industry through some form of tax on betting is not unique to this jurisdiction. Many States have some such arrangements in place. Horse Racing Ireland (HRI) and indeed Bord na gCon maintain that betting duty supports not just important industries - employing between them in the region of 20,000 persons – but is also supportive of a rural way of life. HRI would also maintain that this is an area where Ireland excels and where investment over the past decade or more has produced results which place Ireland at the top of the bloodstock ladder.

1.8 The principles we should espouse for a revised regulatory regime for gambling apply to all forms of gambling, including gambling offered from off-shore. While the motivation is protection of the vulnerable, restricting access by minors, ensuring fairness and transparency, and keeping gambling crime-free, a modern regulatory system should provide scope to enforce future tax compliance measures among off-shore gambling providers where they must adhere to a licensing and regulatory regime in order to sell their products into the jurisdiction.

1.9 All of these developments served to make the review a more intricate and lengthy one and it also makes the future development of effective legislation more complex.

1.10 Developments at EU level too impact on the evolving options. There is, perhaps, a certain hardening of opinion being detected in some Member States. There are those that regard gambling products as coming under the normal rule of engagement as far as free movement of goods and services in an internal market are concerned. Others insist on the primacy and safety of state monopolies or having a significant state involvement/partnership in the gambling arena. Both sides profess to have, and demonstrably should have, the interests of customers, minors and vulnerable gamblers at heart. The evolving jurisprudence would seem to suggest the continued development of "stand-alone" solutions for regulating gambling markets, provided the regulatory solution adopted has at its core the avoidance of crime, the protection of young people and the vulnerable and addressing other downsides of gambling, and perhaps is reflective of social, cultural or religious norms, i.e. there are sound public policy reasons for adopting a particular form of regulation.

1.11 The European Commissioner with responsibility for the Internal Market and Services, M. Michel Barnier, promised a Green Paper on gambling. The Green Paper will commence what M. Barnier describes as a wide ranging consultation process with no preconditions. The process will rely on exploring thematic discussions relying on experts in various fields. Issues such as prevention of fraud, integrity of systems, combating money laundering and tax evasion have been mentioned, and the paper will be focused on the online market, in particular.

1.12 It is clear that if new national legislation is going to address issues such as the regulation of remote gambling (whether provided by off-shore gambling concerns selling remotely into the Irish market, or from companies established and located in the State), what is required is a single legislative act embracing all forms of gambling, because all forms of gambling can be, and typically are, offered by such remote platforms.

1.13 The chapters following discuss some of the important elements of a revised regulatory code for gambling.

2 A REVISED GAMBLING ARCHITECTURE

2.1 A new regulatory architecture for gambling would have the following objectives:

- that young people and the vulnerable are protected,
- that gambling should in all respects be fairly and openly conducted,
- that gambling is kept free of crime.

2.2 The options under discussion, and therefore any legislation that might eventually flow from them, is radical in that it would overturn the existing policy behind gambling, which really has its origins in a 19th Century outlook that gambling is a vice, something to be barely tolerated. In practice, we have moved beyond that, particularly since the State sponsors one of Europe's most successful National Lotteries, whose proceeds are devoted to good causes.

2.3 A revised regulatory architecture would recognise that gambling while offering entertainment to many also has significant downsides that necessitates and justifies regulation and control.

2.4 A new regulatory Act to repeal the Gaming and Lotteries Acts 1956 to 2003, the Betting Act 1931 and other related enactments would be necessary. Such a legislative response would have to aim to bring together under a single enactment the regulatory environment for gambling. This is necessary because it became clear early in the consultation process that due to technological developments, and particularly gambling by remote means such as the internet, it is increasingly difficult to keep the various strands of gambling - gaming, betting and lotteries - separate from one another. Such a regulatory Act could also permit the opening of casinos in the State, subject to strict regulation and licence.

2.5 The National Lottery would remain excluded from the regulatory framework, though for the purposes of meeting certain responsibilities in relation to problem gambling and protection of minors, it is suggested that the National Lottery should be included, but for those purposes alone.

2.6 The regulatory Act should emphasise the measures that must be taken by all gambling operators to protect the vulnerable. It should address for the first time the regulation of remote gambling, i.e. gambling over the internet, by telephone, on interactive TV or by any other device where the provider of a gambling product and the customer interact at a remove from one another.

2.7 It is important to stress, therefore, that any new legislation should not be aimed at deregulation, rather it should aim to regulate better, to regulate strictly where that is required, and to make gambling in all respects unlawful unless permitted by:

- the measures contained in the new Gambling Act; or
- measures contained in the National Lottery Act, or

- measures which regulate the Financial Services sector (i.e. in respect of spread betting - this is an area that may require further elaboration).

2.8 The new regulatory framework would, for the first time, offer specific definitions of gambling itself and its various components - notably gaming, betting and participating in a lottery.

2.9 Gambling would only be permitted on foot of a licence, permit, or some other form of registration or by virtue of an exemption given by the Act (e.g. in respect of certain non-commercial private gambling). There would have to be a body of secondary legislation which would contain the detail of the regulatory regime, for example, in terms of standards, inspections, age verification systems, anti-money laundering compliance, codes of practice, periodic changes to stakes, pay-outs and prizes, premises, facilities for gambling and so on. (See Chapter 3 below, The Regulatory System.)

2.10 In essence, the detail of the regulatory regime will be dependent on the type of gambling offered and the means by which it is conducted. It will be necessary to put much of the detail into secondary legislation so that it is capable of being altered, without having to re-open the primary legislation every time. The gambling environment is a very dynamic one, particularly in the way it exploits new technologies. The regulatory environment needs to be able to respond quickly to new developments. Some would argue that regulatory systems will always be chasing developments in gambling rather than leading them. The important thing is that the regulatory system is capable of adapting. Prohibition, however attractive it may seem as a means of control, simply does not work.

2.11 Therefore, any new legislation would need to be drafted in such a way as to be future-proofed against technological developments. The pace of change in this area is phenomenal. Failure to do this could result in the adopted regulatory environment being too inflexible to react to technological and other changes.

3 THE REGULATORY SYSTEM

3.1 This document introduces the option of a unified regulator for gambling, to be the Department of Justice and Law Reform, thereby bringing gaming, betting and lotteries (excluding the National Lottery) under a single legislative and regulatory umbrella. This is suggested not just because it makes sense to have a single overseeing regulator for gambling, but because the convergence of gambling products in the remote theatre, in particular, makes it necessary. The National Lottery would retain its own legislative basis and would not be regulated by the provisions of any new regulatory Act for gambling. However, the adoption in the revised regulatory architecture of a standard and obligatory approach to responsible gambling and protection of minors could be extended to the operations of the National Lottery, for the purposes of having an overall consistent approach.

3.2 The Report *Regulating Gaming in Ireland* recommended:

that sufficient flexibility be provided in any legislation so as to ensure that the gaming regulatory authority and/or the Minister may, by order, make regulations under the Act in order to respond to technical or other developments or innovations in this rapidly evolving sector. The Committee is of the view that if this is not done the regulatory process will be unable to cope with the dynamic nature of this particular industry.

Better Regulation NOT Deregulation

3.3 The Government has articulated in a White Paper principles of better regulation. The principles are: *necessity, effectiveness, proportionality, transparency, accountability and consistency*. Before the draft legislation is presented to Government a full-scale regulatory impact analysis would need to be carried out. In the meantime, however, having regard to the six principles, it is worth noting that at least in respect of gaming and lotteries regulation, *Regulating Gaming in Ireland* concluded that the current regulatory arrangement "flies in the face of at least five of the six principles set down in the Government White Paper *Regulating Better*, namely effectiveness, proportionality, transparency, accountability and consistency (the remaining principle is necessity) and that it is "completely out of step with modern regulatory practice."

3.4 Given the nature of gambling and the corrosive effect it can have, in some instances, there is no serious argument that can be advanced which would support the view that this is an area that does not require strict regulation - even if the stakes on offer in respect of some products are relatively low. Responsible operators, without exception, also support regulation as a means of ensuring that minors are prohibited from gambling, customers are treated fairly, and rogue operators are not tolerated. Furthermore, there are few, if any, within the industry who would not welcome regulation as a means of keeping the industry crime free. In many respects, therefore, operators welcome forms of regulation because they work to the benefit of the reputation of those companies.

3.5 A principle of regulation in this industry should be to ensure, however, that

responsible operators are not disadvantaged by such regulation as to be driven out of the marketplace. The consequence of such an event would be to leave the field open to unregulated and unscrupulous operators. This eventuality is particularly more likely to occur in the online environment.

3.6 Gaming as a form of gambling is now very much a high tech proposition. Gaming machines may retain the old style "one-armed bandit" look, but they are far from being mechanical stand-alone machines.

3.7 Games can now be changed instantly as machines become server based with new games or altered versions of games downloaded from a server that in theory at least can be located anywhere in the world. An effective regulatory system must be capable of adapting to the speed of innovation now possible in the gaming environment. A key weapon for a regulator must be flexibility, a capacity to match the pace of change and to remain in control. If the regulator (i.e. the State in some guise) permits certain games to be offered to the general public, the regulator must be capable of policing those games to ensure fairness.

3.8 In addition, to providing definitions of gambling, betting, gaming and participating in a lottery, the regulatory system to be given expression in any new Act would, therefore, in line with the report *Regulating Gaming in Ireland*, need to provide for:

- The licensing of operators, manufacturers and others;
- Procedures for operating any gambling establishment;
- Day-to-day regulations for each type of gambling;
- Technical standards for games and systems;
- Independent testing of machines, games and systems; and
- Controls for movement of machines and games.

3.9 Because of the need to ensure the regulatory system can remain flexible and responsive to innovation, much of the detail should be in secondary regulations. There would also be a need for significant enforcement measures, to be paid for by the licensing arrangements. A weak characteristic of our current regulatory system is the ability to have strict enforcement of best practice.

Offences and Penalties

3.10 There should also be a range of penalties for non-compliance with the regulatory system, ranging from administrative-type penalties to criminal law breaches. While it would be important to have a certain range of civil and criminal sanctions in the armoury of the regulatory system, other sanctions which could be imposed without recourse to the courts would be useful. For example, failure to maintain certain records could be dealt with by an administrative fine as a first resort, with failure to pay or contesting the fine leading to its doubling in a court situation. The objective would be to encourage quick compliance with certain norms. The Garda Síochána would of course continue to have a pre-eminent role in investigating and prosecuting a range of criminal offences.

Role for District Court or other certification to be retained?

3.11 The revised regulatory framework should seek to retain the best aspects of the current regimes. The day-to-day regulation of the sector would be undertaken by a Gambling Control Unit located in the Department of Justice and Law Reform. It should not be the intention to interfere with good practice, where it currently exists. For example, certain certification arrangements around betting and indeed aspects of gaming and lotteries are considered fit for purpose and should be retained. Such a certification process, which examines the fitness of an individual in the context of a licence being granted to a premises has the commendable aspects of being (a) locally based, (b) public and open to scrutiny, and (c) in certain cases judicial.

3.12 The granting of a licence on foot of such a certification process, however, would be removed from the Revenue Commissioners and would become the responsibility of the Gambling Control Unit of the Department of Justice and Law Reform who would issue all licences for gambling, except for premises licences which could be issued by local authorities. The Minister for Justice and Law Reform would be empowered to appoint an Authorised Officer to head up the Gambling Control Unit, and the licences would be issued in the name of that Authorised Officer on behalf of the Minister.

3.13 These licences would cover all forms of gambling for which a certificate is required. There would be a licence fee based on the nature and size of the operation in question. Licence fees would be in addition to any gambling tax/duty imposed from the taxation perspective and designed to cover the entire cost of overseeing ongoing compliance with the terms of the licence, most particularly in the areas of social responsibility obligations, maintaining appropriate gaming machine standards, maintaining appropriate records, meeting appropriate anti-money laundering standards, compliance with age verification procedures and any other conditions imposed by the regulatory system.

3.14 A new regulatory Act would establish an Appeals Body to hear appeals from decisions made by the Department of Justice and Law Reform in relation to licences provided by the Department.

Enforcement by the regulatory system

3.15 *Regulating Gaming in Ireland* concluded that a *proper system of regulation therefore requires a regulatory authority with an appropriate mixture of skills. While most of these should be in-house, some may be outsourced.* Proper regulation of gambling pre-supposes that the regulatory authority will be in a position to interrogate systems (automated or mechanical, paper or electronic, server-based or stand-alone) to determine that they are complying with licensing standards. There is no real tradition of this occurring in the present patchwork of regulatory systems in place in the State; therefore, the experience to conduct such enforcement or compliance duties is not available in-house. For that reason, there will be certain technical expertise around compliance that will need to be "bought in", in the immediate term. However, as with outsourced IT support generally, this should not prove to be an impediment to effective regulatory practice, and would in all likelihood prove to be a more cost-effective solution, at least in the immediate term. Other functions of the

regulatory system, for example conducting inspections of premises, examining records and other documentation, monitoring compliance with social responsibility codes and obligations could be carried out from within staffing complements assigned to the regulatory function.

3.16 It needs to be stressed that gambling requires to be regulated not as a means of extracting revenue from it but for other sound public policy reasons, such as avoidance of crime and protection of vulnerable persons. Gambling is not like any other commercial transaction: it has the potential to lead to devastating consequences for a small minority of customers. But because of that potential for harm, the observation in *Regulating Gaming in Ireland* that services should be unlawful except pursuant to a licence granted by the gaming regulatory authority, and that, therefore, the grant of a licence should be regarded as a privilege and not a right, is an important principle. It means that provided the decisions around the grant of a licence are not arbitrary, and are designed to offer protection to the consumer (and indeed to the State), conditions as to performance and activity undertaken can be imposed. It follows too, that licences can be suspended, revoked or otherwise altered in the public good.

3.17 The regulatory burden should be borne by the licensing arrangements. Companies or other entities selling gambling products in or into the State can generally expect to reap a rich reward for the propensity of people to "enjoy a flutter". It is not unreasonable to expect that, as well as other revenue accruing to the State, the costs associated with ensuring adherence to standards, for example, are met by the industry as part of the licensing arrangements. In addition, providers of gambling products would be expected to fund the independent commissioning of research into gambling, particularly into problem and compulsive gambling. In return, it follows too that licensed gambling operators should not be disadvantaged by virtue of operating to an imposed standard and licensed operators should with some confidence expect unlicensed activity to be effectively prevented or closed down, as far as that is practicable.

Licensing Remote Gambling

3.18 The use of the District Court as a licensing court is appropriate as it fulfils certain important functions of better regulation, for example, it provides for a licensing process that is open to public scrutiny, is grounded in local areas and is judicial in nature. It will not, however, be of any real effect in the context of licensing remote gambling concerns selling their products into the Irish market, but who are not established here. An alternative, non-judicial authorisation/licensing process, under the authority of the Department of Justice and Law Reform could be used in respect of remote gambling facilities, whether such facilities are based in the jurisdiction or not, or are partly based in the jurisdiction. The question has been posed (in relation to remote gambling): what arrangements should apply if a company is located in the State but does not sell its products to residents of the State? The State cannot be a haven for unregulated gambling activity, such a company, therefore, would have to comply with the State regulatory norms, as if it were selling its products in the State.

Sanctions on failure to hold a licence

3.19 If we accept as a principle that the grant of a licence should be regarded as a privilege

and not a right, the State is entitled to invoke measures to ensure compliance with a licensing code or with licensing standards and there should be sanctions against companies that operate in the market-place without a licence. In terms of land based operators who are not licensed the situation is relatively straightforward: if they offer commercial gambling they commit an offence and can be made amenable through the Courts. The same cannot be applied to the remote gambling sector. Clearly, it is easier to apply sanctions - such as closure, fines, imprisonment, etc. against entities that have a physical presence in the jurisdiction. Other sanctions must be brought to bear where the unlicensed operator has no presence in the jurisdiction.

3.20 In order to be effective and fair to licensed operators, any sanction to be contemplated against an unlicensed remote gambling operator would have to be capable of being enforced, otherwise it would simply have the effect of penalising those who choose to comply, increase the costs on compliant companies, and in extreme cases drive compliant companies out of the market, thereby leaving consumers at the prey of the more unscrupulous operators who are outside the reach of any form of regulation, or at best are subject to "light-touch" regulation elsewhere. This would not be a desirable outcome, but could be the unintended consequence of adopting measures to enforce licensing compliance.

3.21 One sanction contemplated against unlicensed operators would be to effect a ban on a remote gambling operator from advertising in the jurisdiction. Of course, an obvious shortcoming of a measure such as a ban on advertising goes to the nature of our mass media market. Ireland receives much of its mass communications media from outside the State - whether in print or other form. This would make an advertising ban particularly ineffective (unless we were to resort to the practice of seizing copy at the ports), and then other forms of media would remain unaffected. Furthermore, it is understood that most internet operators devote the majority of their advertising budgets now to the online environment. It is particularly difficult to police this area.

3.22 The regulatory system could also empower the Minister to take other powers against unlicensed operators, including powers to block offending websites and to impact on the financial transaction processing of offending companies. Such powers might only be considered and taken on a case by case basis and after multiple infringements. There are some solutions offered in the market place which may make this option more attractive. If technology in this area is developed enough to make such option a routinely viable one, and if concerns around unintentional blocking of legitimate websites can be sufficiently allayed, the regulatory system should be positioned to be able to deploy such solutions.

3.23 The anecdotal evidence at least from the USA, where the Unlawful Internet Gambling Enforcement Act of 2006 (also called UIGEA) is in force, is that the attempt to outlaw internet gambling has failed. Some sources (e.g. Poker Players Research, a market research company specialising in the poker industry) suggest that despite UIGEA the US has more than five times the number of online poker players than the next largest market, the UK. There is a danger that in pursuing offending unlicensed gambling sites the regulatory system would be continually playing "catch up" as the offenders would employ means of

redirecting customers.

3.24 There is an undoubted challenge before us as far as enforcing the principles at the heart of gambling policy (player protection and protection of minors, keeping gambling crime-free, and promoting fair treatment for the customer) are concerned.

3.25 The State must and will have a range of weapons in its armoury to be deployed as necessary, provided the playing pitch is level. If we acknowledge that there are unscrupulous online operators in the marketplace, we are obliged to take all necessary steps to discommode them. In the online environment we have greater challenges and the ability of that environment to remain, as the Report, *Regulating Gaming in Ireland* noted, "always just out of reach" makes the regulatory framework somewhat different from what would be possible in the offline environment. The law should, therefore, provide for a range of sanctions against unlicensed operators.

Personal Licences

3.26 The regulatory system would also ensure that certain persons working in the gambling industry require personal licences. These personal licences would be awarded by the Department of Justice and Law Reform and be for specific functions undertaken in a gambling setting: for example a person who manages a casino would need a casino manager's licence, a person who is responsible for regulatory compliance would need a compliance licence, a croupier would require a croupier's licence, a financial manager would require a financial manager's licence, and so on. The range of licences would be outlined in legislation, as would what information would have to be supplied in respect of each personal licence. For example, arrangements around establishing the identity of the applicant for a licence, his or her criminal record, issues relating to the personal finances of an applicant may be relevant, as would of course, personal integrity, and competence to fulfil a particular role.

Other Powers

3.27 Officers appointed by the Minister for Justice and Law Reform would have powers of entry and inspection of gambling premises so as to monitor and enforce compliance with the regulatory necessities.

Role of Local Authorities

3.28 Local authorities currently have a pre-eminent role in regulating one form of gambling, i.e. gaming in licensed amusement halls and funfairs. The power to adopt, by resolution, Part III of the 1956 Gaming and Lotteries Act so as to permit gaming to take place within their administrative areas is an all or nothing power: the local authority either permits gaming or it does not (though it can opt to permit it in a designated portion of its administrative area). A local authority also has the power to change its mind and rescind adoption of Part III, thereby outlawing gaming in all or part of its administrative area. By adopting Part III the local authority is approving gaming and by rescinding Part III it is clearly expressing opposition to gaming. At the same time, a neighbouring local authority may be adopting the contrary view.

3.29 The power in question applies only in respect of gaming and does not apply to another more geographically pervasive form of gambling, i.e. betting (The Revenue Commissioners statistics for 2008 record a provisional figure of 1,093 bookmaking premises licences issued as opposed to 105 gaming premises licenses.) As the report *Regulating Gaming in Ireland* records (pp 22 - 23) the local authority power was contentious from the start. There are 114 such local authorities in the State so the potential for a patchwork quilt map of provision is clear. The power to permit gaming may be absolute, but then once it has permitted gaming in its area the only method the local authority has to regulate such gambling is by banning it altogether. Again, the view of the author of *Regulating Gaming in Ireland* is probably most apposite. The report considered the arguments in favour of and against retaining the *status quo* in relation to the role of local authorities. It came down strongly against retaining the existing provisions of the 1956 Act. The role of local authorities could be given better expression through the planning process, a regulatory control mechanism that was not available to them in 1956.

3.30 While all 114 local authorities were invited by letter to contribute to the review, the overall response was disappointing. Only Dublin City Council, where Part III of the Act was rescinded in the latter half of the 1980s, engaged proactively with the review process. The Council established a Cross Party Gambling Review sub-group which formulated a specific submission reflective of the view of councillors and which subsequently met officials conducting the review. The Councillors in Dublin City Council, at least, expressed a strong desire that local authorities should be given a role in any new statutory mechanism regulating all forms of premises-based gambling

3.31 The role of a local authority cannot, however, be defined in the future as simply as it was in the 1956 Act, as an "all or nothing" provision permitting or not permitting gaming (or other forms of gambling, for that matter), after which the local authority has no other involvement in the matter. This is too blunt an instrument for the future good regulation of an activity that happens at various levels, and for which there is a certain demand. Authority to permit or not permit a particular activity should bring with it a responsibility to ensure the activity is being conducted where the authority wants it to be conducted, if at all, and by persons who are entitled to engage in the activity and between the times permitted for the activity. In short, local authorities should become part of the regulatory system, and an appropriate mechanism for their participation could be as the authority responsible for licensing gambling premises.

3.32 A new Act regulating gambling would, therefore, abolish the **current** power of local authorities to ban gaming from their administrative areas. In return, local authorities could become a licensing authority in respect of premises to be used for the purposes of gambling. In addition, however, a most powerful weapon available to the local authorities in relation to gambling should be their powers available under the planning process. If necessary, these powers could be strengthened to address issues specific to gambling. In particular, it could be the case that a change of use from any existing use into any business involving gambling constitutes a material change of use and, therefore, requires planning permission- even if a

different form of gambling had been carried out on the premises hitherto.

Other regulatory measures

3.33 There would also be a system of temporary use notices. These authorise premises that are not licensed generally for gambling purposes to be used for certain types of gambling, for limited periods and for charitable or philanthropic purposes. Card games such as "Texas Hold-Em" would be regulated under such a system. The premises in question would need to get a certificate from the local District Court or Garda Síochána, while persons promoting this form of gambling could apply to the Department of Justice and Law Reform, for an operating licence.

Gambling Contracts

3.34 Irish law currently prevents contracts relating to gambling from being enforceable through the courts. Great Britain has moved away from that position in its gambling legislation (Gambling Act, 2005). The Report *Regulating Gaming in Ireland* made the point, admittedly in respect of gaming only, that if gaming as an industry is regulated then gaming contracts should equally be given the protection of the law. The Act would not, therefore, continue the provisions currently contained in law preventing the enforceability of gambling contracts.

4. RESPONSIBLE GAMBLING PRACTICE PROTECTION OF MINORS AND VULNERABLE PERSONS

4.1 It can be acknowledged from the start, that for some, the pairing of the words "responsible" and "gambling" is incongruous. However, it has long been a concern of State regulatory systems to ensure that players are protected from illegal and or unscrupulous operators. Likewise, steps are taken in regulatory systems to ensure young persons are not encouraged to gamble.

Minors

4.2 A key feature of an Act regulating gambling would be the way in which, for the first time, explicit provision is made to protect children and vulnerable adults from the downsides of gambling. It should be a principle of regulation that no licensed or permitted adult gambling product would be supplied to a person under 18 years of age and no person under 18 years of age would be granted access to a licensed adult gambling establishment or licensed gambling site (on the internet).

4.3 Licensed operators would have to have procedures in place for verifying the age of persons on their premises or visiting their sites and would commit an offence if persons under 18 are permitted on a premises or to gamble on a site. Consideration could be given to making the offence one of strict liability with the production of specified age documents and other forms of age verification, as appropriate, the only form of permitted defence.

4.4 There would be specific offences in such an Act related to allowing children or young persons, as the case may be, access to gambling, or related to encouraging children or young persons to gamble. There would be specific offences that would prevent children and young people from being given access to inappropriate or harmful gambling opportunities. In particular, it would be an offence to invite or permit a child or a young person to gamble contrary to the provisions of the Act. As with liquor licensing law, it would be an offence for young persons to be on prohibited premises or to engage in any form of gambling in a licensed gambling premises or site. The Act would oblige gambling operators, as a condition of licence, to have policies, procedures and practices in place aimed at the protection of young people.

4.5 It would not be permitted to locate any gambling facility - casino, betting office, adult gaming centre - close to schools or children's recreation areas. A licence application would fail if the premises were found to be within a specified distance of such areas.

Vulnerable Persons

4.6 Similarly there would be specific measures adopted in relation to promoting protection of vulnerable persons who may experience problems in their gambling. It could be a condition of all licences that operators have in place systems and procedures that would oblige them to take action to assist persons who they suspect may have a problem, or who admit to having a problem. In essence this means first of all that operators need to have "know your customer" policies in place in respect of habitual or frequent users of their

products. They must also implement stringent self exclusion procedures. Failure to implement a self-exclusion order successfully, in circumstances where the customer has a written agreement with the gambling operator that he or she is not to be permitted to gamble on the premises or site of the operator, may result in the gambling operator being fined or temporarily losing his or her licence.

4.7 Powers could be taken in the Act, consistent with Data Protection law, to oblige all licensed gaming operators to maintain a register of self-excluded persons. That register may be accessed by the regulator who may arrange for it to be shared with other gambling operators for the purposes of the further protection of vulnerable persons.

4.8 Licensing conditions imposed on a licensee would seek to implement good customer support. In the online environment operators would need to have software deployed which ensures that customers are always kept aware of how much they have gambled and how long they have gambled. There must be mandatory "time-out" on gambling and hourly, daily and weekly limits set.

4.9 Gambling on credit would not be allowed. In this context, the use of credit cards to pay for gambling either by remote or non-remote means could be restricted.

4.10 A new Act would regulate the advertising of gambling, create new offences relating to the advertising of unlawful gambling and provide powers to make regulations controlling the content of gambling advertisements. Any gambling concern without a current licence or permit to operate in the State would not be permitted to advertise in the jurisdiction and media providers would be prohibited from accepting such advertisements.

4.11 The Act would, of course, permit certain forms of private and non-commercial gambling, as heretofore, to include authorisations for domestic gaming and betting, and provisions for gaming and lotteries at non-commercial events.

5. CASINOS

5.1 The impetus to change our gambling laws arose, in a very real sense, from the reality that a demand now existed for different permitted forms of gambling, particularly casino style gaming. The growth in so-called private members' clubs offering casino gaming was the most visible manifestation of that demand. It was also to be seen in the on-line environment, particularly with the rise of traditional betting companies engaging in a range of gambling activities over the internet. Even if the State wished to deny its citizens access to forms of gambling that are legal in practically every other Member State of the EU, prohibition as an instrument of control is not effective. It only serves to drive such gambling activity underground and into the clutches of unscrupulous operators.

5.2 This part of *Options for Regulating Gambling* therefore, explores the regulatory architecture that could be adopted in relation to casino gambling. Before looking at the possible regulatory options, however, we should outline some of the arguments adduced for and against casinos. The arguments below are not intended to make the case for or against casinos. They simply demonstrate that there are positives to such a development, as well as negatives. In essence, casino gaming is a form of gambling and the real argument has to be whether a State is willing to permit that form of gambling or not, and if it is, then under what set of circumstances?

Arguments in Favour

5.2.1. Responsible gambling measures, including measures aimed at addressing problem gambling, can be hard-wired into the licensing conditions. Money which would have been spent in such a casino will not, in the absence of such a place, be spent on non-gambling activities. It is more likely to be spent on other forms of gambling, and more than likely on off-shore, remote gambling, which may be unregulated.

5.2.2. The strict licensing of a casino affords the regulatory authority, i.e. the State, the opportunity to ensure that it becomes not just a place of casual gambling, but part of a wider leisure/entertainment package requiring some planning before deciding on a visit.

5.2.3. It can be argued that easier and more effective regulation and control can be exercised over a single large undertaking, than a multiplicity of small locations. That is why, even in the context of the proposal for smaller "registered casinos" a minimum size is proposed so that they do not proliferate, and if necessary the Minister can put a cap on the overall number.

5.2.4. A resort casino, by definition means that the majority of the customers will come from outside the immediate locality. Therefore, the economic benefit to the local region is maximised, and the negative effect in terms of problem gambling is minimised.

5.2.5. Resort casinos should be capable of generating large-scale employments both in the construction and operational phases.

5.2.6. Resort casinos should also provide a high return to the State in terms of licensing fees and gambling tax revenue and could make a contribution to the social and economic regeneration of a hitherto depressed region.

5.2.7. The high end resort casino experience - incorporating or having access to many other business and leisure activities e.g. golf, spa, concert venue, conference venue etc. - does

offer a certain potential for tourists and others and could be seen as enhancing the attractiveness of a region in which it was located.

Arguments Against

5.2.8. Gambling affects physical, social and mental wellbeing as well as creating debt.

5.2.9. People with major gambling problems often turn to crime and become violent towards their partners.

5.2.10. Poor communities are hardest hit by gambling.

5.2.11. Casino gambling acts as a corrupting influence on national and local government.

5.2.12. Organised crime takes advantage of casinos as a best means for laundering the proceeds of crime.

5.2.13. Compulsive gambling puts a huge cost on the State in terms of health cost and the cost of lost economic output

5.3 If a future Government were prepared to licence casinos, different categories of casino could be permitted and there could be limitations as to numbers and size. In essence, though, new legislation regulating gambling might only permit two main categories of casino:

- Registered Casino
- Resort Casino.

Registered Casino

5.3 The law could provide that a registered casino is a relatively small undertaking, that might comprise no more than 15 gaming tables and a fixed number of gaming machines linked to the number of tables - typically, no more than 3 gaming machines per table. Such a development would in essence be a means of meeting the obvious demand for casino gaming that has resulted in the rise of “private members’ gaming clubs”. It was, after all recognition of this phenomenon that first moved the Government to examine the possibility of regulating casinos. It would fall to the Minister for Justice and Law Reform to review these maximum permitted limits no later than three years after the coming into force of the Act or three years after the first such casino is registered, whichever comes latest. A registered casino would not be permitted to operate gaming machines unless it offers table games. The number of permitted gaming tables would not include tables for the playing of poker tournaments. Separate provision can be made to hold poker tournaments. Typically, poker tournaments involve card playing where the players are competing against each other and not against the House, which has no in-built margin or edge. Poker tournaments are often organised as a means of fundraising for charities, with the House or organisers taking a commission.

5.4 The approved casino games would need to be set out in secondary legislation and each Registered Casino permitted to operate only approved games. The registration or licence fee for the casino would be calculated on the basis of the number of gaming tables operated by the casino and the number of gaming machines tied to each table. As with other forms of gambling, the proceeds of the licence/registration fee would go towards meeting the cost of the regulatory process.

5.5 Registered Casinos must also provide for the comfort of their customers by offering food and beverages to an acceptable standard, and a place away from the gaming floor, where players can take a break. A Registered Casino might be permitted to offer intoxicating liquor, but only if it has a licence to do so. The route to a liquor licence could be as proposed in the report *Regulating Gaming in Ireland* i.e. by applying in the normal course for a publican's licence. The possibility of having a specific Casino Liquor Licence could be examined in the course of the development of any new legislation regulating gambling. This is because many casinos choose to be 24 hour operations. In any event, the sale, supply or consumption of alcohol on the gaming floor would not be permitted. If a specific licence were to be developed, however, cast iron arrangements would have to be made to ensure that such venues did not become all-night drinking emporia masquerading as casinos. This is probably not likely as the cost of supporting a casino licence from liquor sales would not be a feasible proposition, and it would be a condition of the casino licence that casino gaming takes place. Regulations could also limit the floor area in which liquor could be served.

Licensing arrangements in respect of registered casinos

5.6 It should be the effect of any new law regulating gambling that, for once and for all, any room for doubt in terms of where and under what circumstances casino gambling may take place, is removed. Furthermore, there should be no possibility that places described as private members' gaming clubs (or any other analogous description) could, following such new law, be able to offer casino games, or any other form of gambling by virtue of being a member's club. If such a place sought to offer casino gaming, it would have to apply for a licence as a registered casino.

5.7 The new law should not make any commitment that places offering casino gaming prior to the commencement of the Act would be automatically licensed as registered casinos. They should have to apply for a licence in the normal course and succeed or not on the basis of that application for a licence. Consideration could be given to obliging all places that provide casino games, and who do not have a licence to provide such games, to cease such activity or commit an offence. Any place that did not cease operations would be disqualified from applying for a license for a casino, at a future date.

5.8 The licensing arrangements for a registered casino would be set out in the Act. Typically, as is the case in many other jurisdictions across the globe, the casino regulatory licensing system, which can be a combination of a court-based and regulatory authority based system would provide for the following licence types:

- ✓ A Casino Operating Licence
- ✓ A casino Premises Licence
- ✓ Various Casino personnel licences (personal licences)

5.9 No licence for a premises would be entertained unless planning permission has been sought and ultimately granted, regardless of what activity had taken place in the premises,

prior to the application for a casino premises licence.

5.10 Licensing arrangements would typically concentrate on the character of the applicant, financial status, record in other jurisdictions if appropriate, tax status, and actual ownership of a company behind an application for a casino licence. The suitability of the proposed casino premises would form a second element of the licence application process (see also from paragraph 5.32 onwards, below).

Resort Casino

5.11 If it is proposed that the law should provide for at least the possibility of large-scale casinos being permitted, best regulatory practice should be followed. Casino gaming can and does take many forms. The advent of the internet means that a person does not have to leave home to play casino table games all day every day, games that formerly were available only in large "bricks and mortar" casinos. Counter-intuitively perhaps, to some extent, the argument has been put forward (by, for example Professor Peter Collins, Director, Centre for the Study of Gambling at the University of Salford) that concerns about problem gambling can be better addressed by a resort-style casino, than by other forms of gambling (except gambling on a lottery). The argument advanced is that money which would have been spent in such a casino will not, in the absence of such a place, be spent on non-gambling activities. It is more likely to be spent on other forms of gambling, and more than likely on off-shore, remote gambling.

5.12 The strict licensing of a resort casino affords the regulatory authority, i.e. the State, the opportunity to ensure that it becomes not just a place of casual gambling, but part of a wider leisure/entertainment package requiring some planning before deciding on a visit. Licensing also means that social responsibility measures, including measures aimed at addressing problem gambling, can be hard-wired into the licensing conditions. A resort casino, by definition means that the majority of the customers would come from outside the immediate locality. Therefore, the economic benefit to the local region is maximised.

5.13 Such casinos are not uncommon in other jurisdictions - every MS of the EU bar Ireland and Cyprus permits some kind of casino, either as private venture undertakings, licensed and taxed by the State, or as a State monopoly or quasi-monopoly venture. See the Appendix for a description of how casinos are provided for in selected jurisdictions.

5.14 In Great Britain, the Gambling Act 2005 provided for the following new casino developments, as well as the strict regulation of existing casinos.

- A regional casino to have a minimum total customer area of 5,000m², and be permitted up to 1,250 unlimited jackpot gaming machines.
- 8 Large casinos to have a minimum total customer area of 1,500m², and be permitted up to 150 gaming machines, with a maximum jackpot of £4,000.
- 8 Small casinos to have a minimum total customer area of 750m², and be permitted up to 80 gaming machines, with a maximum jackpot of £4,000.

The one regional and eight large casinos are permitted to offer bingo, and all three categories

are permitted to offer betting.

5.15 The Act provided that the Secretary of State for Culture Media and Sport would be given the function of determining the geographical distribution of the new casinos, and a Casino Advisory Panel was set up to make recommendations to the Secretary for State on where new casinos allowed by the Gambling Act 2005 should be located.

5.16 The Government did not proceed with the regional casino, and to date none of the licences on offer for new large or small casinos have been taken up. There are however still over 140 casinos operating in Great Britain. *Industry Statistics 2008/2009*, published by the Gambling Commission in Great Britain disclose that the 143 casinos and 2 card clubs employed some 14,204 persons (full and part-timers), and recorded over 16.6 million visits in the period April 2008 to March 2009. The total "Drop" i.e. money exchanged for gaming chips was approximately **£4.5 billion** and the "Win" i.e. amount retained by the casinos was £678.6 million, or 15%. In addition, the gross profit from gaming machines in casinos was some £120.5 million.

What is a resort casino?

5.17 A resort casino would be, by its very nature, a significant development, costing in the tens if not hundreds of millions of Euro to deliver. Typically, it would involve multiple life-style experiences with a casino as an important part of the overall development. Casinos incorporated into a resort-type development would be extremely large, comprising, perhaps, up to five thousand square metres of floor space. These would have multiple gaming tables and a very large number of gaming machines, perhaps as many as 1,000 to 1,500. The casino customer area would also have to offer other customer services, such as live entertainment, dining and refreshment areas.

5.18 Such facilities should be capable of generating large-scale employments both in the construction and operational phases. They should also provide a high return to the State in terms of licensing fees and gambling tax revenue. Given the nature and cost of such a development it is proposed that any law regulating this form of gambling would allow for an operating licence that would be valid -subject to ongoing compliance - for a fixed term, e.g. 15 years. A successful applicant would be guaranteed that no other such facility, capable of competing directly, would be licensed. This would not, however, rule out the licensing of small-scale registered casinos, in the general area. This fixed term would be necessary to permit the operator, all other things being equal, to recoup the initial outlay. The initial and annual cost of the licence would reflect the exclusive protection provided.

5.19 There has been an amount of interest expressed in that type of development from both local Irish interests and some large-scale foreign conglomerates. There has also been opposition voiced to such a proposal. Please see paragraphs 5.2.1 to 5.2.13 setting out some of the arguments for and against large-scale casino developments.

5.20 The jurisdiction is not so large that it could reasonably sustain a "Las Vegas" style development. Neither would such a development, incorporating multiple resort casinos in

one location be desirable. The question of, if any, or how many resort casinos would be permitted will have to be decided in the future. Appropriate powers would have to be included in any legislation to ensure, as with casinos generally, that a resort casino application could not succeed in residential areas or close to schools, colleges or other relevant places. The contribution of such a development to the social and economic regeneration of an area could be a factor.

5.21 There is no suggestion being made here that a resort casino would instantly succeed, or that it would be a tourist draw to an area. That is a risk the promoters of such a venture would have to take, and in that context the initial licence fee would be non-refundable. Furthermore, there could be no question of the State in any circumstances providing any form of support to such a venture, by way of grants or favourable tax treatment. On the other hand, the casino experience, incorporating or having access to many other activities - golf, spa, concert venue, conference venue, and other activities - does offer a certain potential for tourists and others. It could be seen as enhancing the attractiveness of a region or location if there was a high-class casino available to patrons.

5.22 Regulation of such a place - from the gambling perspective - would not be any more onerous than for other smaller venues. Indeed, it would be possible and desirable to have Gambling Control personnel permanently or semi-permanently on site in such a venue to enforce all aspects of the regulatory regime. The costs of such compliance would be covered by the licensing arrangements and by an annual levy on the operator as a condition of the licence.

Suggested Selection Arrangements for a resort casino (in the event of a decision being made to permit same)

5.23 The arrangements for the grant of a licence (or licences, if the adjudication process recommends more than one) for a resort casino would be robust and set out in primary and in secondary legislation.

5.24 The award of a licence for a resort casino would need to be made subject to certain criteria. A proposed location must have the support of the people living in the area - not necessarily all the people, because that prospect is unrealistic and unattainable, not just in terms of a gambling venture. There must be clear opportunities for such a project to deliver real benefits to the region - employment, being one obvious benefit. There must be real measures taken to ensure that the negative social consequences of gambling are minimised. Some of these would be statutory obligations anyway, but the emphasis here will be on methods of delivery and what practical measures would be deployed. For example, would there be strategies in place to measure the impact of a casino and any increase in problem gambling in the area?

5.25 Given the nature of the Resort Casino in terms of scale and limited number that would be permitted, the selection and licensing arrangements would be managed from within the Department of Justice and Law Reform, through the establishment of an *Independent Casino Adjudication Panel* comprised of expert personnel in the legal, planning, financial,

community health and consumer areas. An *Independent* Casino Adjudication Panel will have two functions: *location adjudication* and *licensing*.

5.26 The Panel would be empowered by a provision in legislation regulating gambling to recommend to the Minister for Justice and Law Reform and the Government the appropriate location or locations for a resort casino. In this context, the Panel would be entitled to receive submissions from local authorities or private entities or from a combined local authority/private entity partnership on possible locations. The Panel would not, however, be constrained by such submissions and may make a recommendation in relation to a region, even if no submission is received. In arriving at a recommendation, the Panel would take account of certain factors such as:

- that the local authority in the area has no principled objection to a large-scale casino development (this will obviously not apply where the local authority makes a submission in favour of such a development)
- that the proposed development has the potential to contribute significantly to the economic regeneration of an area, or to contribute significantly to local employment
- that the advantages are not outweighed by negative social impacts, such as problem gambling.

5.27 Such a Panel would conduct its investigations in public, as far as possible, and hear from local and regional interests, before making a recommendation. The Panel could examine a number of locations from within the same general region, i.e. Eastern seaboard incorporating Dublin; the South and the North/West/Mid-West. The Panel would, in considering the suitability of possible locations, necessarily take into account infrastructural and other market considerations, such as the presence of pre-existing and adequate air, rail, road and sea ferry routes, and the potential for the development to have a Cross-Border dimension.

5.28 The Panel would deliver a Recommendation to the Minister selecting one location either in each of the regions, or in one or two of them, or it could deliver a negative recommendation. The Panel would publish its recommendation(s). It would be a matter for the Minister then to bring the recommendation(s) of the Panel to Government for a decision, either endorsing the recommendation, in whole or in part, or rejecting it. If the Government were to reject the recommendation entirely, or accept a negative recommendation made by the Panel, no application for a Resort Casino would be considered for a further 5 years.

5.29 The report and recommendation of the Casino Adjudication Panel and the decision of the Government in the matter would be the subject of a debate in the Dáil, which would have the opportunity to endorse or reject the Government's decision in the matter. If the Dáil were to reject the recommendation or recommendations of the Panel (where it had proposed to permit a casino) then no application for a resort casino licence would be considered for a period of 5 years.

5.30 There is a form of double lock mechanism here. The Government and the Dáil

would have the authority to reject the notion of a casino being permitted, but neither of these arms of the State could direct where or who would benefit from the award of a casino licence. This places the Government and the Oireachtas in a position where neither could ever be accused of favouring one area over another, but could conclude, in the public interest, that the time or location is not right for a large-scale gambling enterprise.

Licensing arrangements specific to a resort casino

5.31 Following a positive decision in relation to a casino location, an Independent Casino Adjudication Panel would then invite applications for a licence to establish and run a Resort Casino. The Panel would evaluate applications and deliver a Preliminary Decision and subsequently a Final Decision in respect of any licensing proposal. In the time between the Preliminary Decision and Final Decision a promoter could seek to finalise outstanding issues, including finalising planning. The costs of the licensing adjudication process would be borne by the promoters who would be obliged to pay a licensing application fee, as well as an annual licence fee.

5.32 The licence application fee would be calculated to cover the full cost of the licence determination process. In that context it is proposed that the process used by the Commission for Communications Regulation (ComReg) when awarding a 3G Licence could be adopted. Each applicant would be expected to provide a valid bank draft (in an amount to be determined) as a deposit to cover the maximum amount of the administrative fee of the licence determination process with the Independent Casino Adjudication Panel. Only applicants who would be offered a licence would be liable for the costs of the competition. In the event of an Applicant not offered or awarded a licence, their deposits would be refunded. If, however, no licence is awarded then the deposits would be returned less an equal deduction from each applicant to cover the full cost of the licence application process.

5.33 The successful promoter(s) would then be given a fixed term within which to bring a project to fruition, following the award of a licence. Failure to do so could result in the licence being withdrawn and an alternative promoter invited to apply.

5.34 An annual casino operating licence would apply, payable say for the first time within 90 days of the casino opening, and on a fixed date thereafter. The licence would have stipulated the number of gaming tables and gaming machines permitted and the licence fee would be based on those numbers. An illustrative licence fee might be €500 per gaming machine and €1,000 per table. The fee would be in addition, of course, to gaming tax. There are possibilities to treat the taxation of resort casinos differently from other types of casinos, or gambling ventures. There is also the possibility of having a two-tier tax system: An exchequer tax could be based on gross gaming revenue - i.e. total amount gambled net of winnings - and in addition a local tax could be imposed (in addition to rates) in return for the local authority supporting the project. This local tax might be a poll tax on each customer. A €2 entry tax per visit would, if the resort casino is performing to the expectations of its promoters, generate significant income for a local authority.

5.35 An Independent Casino Adjudication Panel, in arriving at its Preliminary and Final decisions would have extensive powers to examine the viability and sustainability of any proposal, and also to examine the bona fides of the promoters. Failure by the promoters to give full information, or the concealment of information by promoters would result in a negative adjudication. In addition if facts material to an application are discovered subsequent to an Adjudication being made a promoter could find itself subject to fines or, in the final analysis, its licence to operate terminated. The decision to award a licence to a particular entity would be the sole prerogative of the Independent Casino Adjudication Panel.

5.36 Where a licence has been granted, as well as licensing fees, there would be payable a bond to be lodged in favour of the Minister for Justice and Law Reform. The bond is designed to ensure compliance by the licensee with all regulatory requirements. The amount of the bond would be determined by the Casino Adjudication Panel and would be announced at the time of the call for applications for a licence.

Licensing and other matters common to all casino types

5.37 The Casino Committee Report *Regulating Gaming in Ireland* (in Appendix 14) included an illustrative framework for a casino operating licence, which could be adapted for the purpose of ensuring that a rigorous regulatory examination is conducted prior to a casino receiving an operating licence.

5.38 The licensing examination would centre on the applicants and their bona fides and would entail establishing the suitability of the applicant. The investigations would be carried out by the Department of Justice and Law Reform on behalf of the licensing authority. These investigations would cover not just the licence applicant but all persons, whether natural persons or not, associated or connected with the ownership, administration or management of the operations or business of the casino licensee applicant. The grant of a licence must not be regarded as a right, rather as a privilege, subject to revocation, amendment, endorsement, or being otherwise altered by the licensing authority. Any person or entity requiring a licence to operate a casino in the State must be prepared to be fully vetted (and all that that entails) prior to a licence being granted. The onus, however, would be on the applicant(s) for a licence to demonstrate suitability and would, therefore, be obliged to establish clearly:

- 1) That, in respect of those associated with the application, there exists a satisfactory criminal record (to a standard outlined in the legislation).
- 2) That each person or entity has the resources necessary to carry out the licensed activities.
- 3) That each person or entity in question has access to or is able to obtain adequate funding from a legitimate financial source which is fully traceable, and to which the licensing authority has access.
- 4) That this funding is adequate to ensure the financial viability of the casino's operations.
- 5) That each person or entity in question is fully tax compliant and have obtained a tax

clearance certificate which must be renewed annually.

6) That each person or entity in question have kept and maintained tax records for a suitable period, e.g. the previous seven years.

7) That each person or entity in question is of good repute, having regard to character, honesty and integrity.

8) That in the case of the casino licensee not being a natural person or entity – that it has arranged or, as the circumstances require, has, in an appropriate case, a satisfactory ownership, trust or corporate structure, that is clearly outlined.

9) That none of the persons associated with the licence application has any business association with any person, body or association who or that, in the opinion of the licensing authority after investigation made or caused to be made, is not of good repute having regard to character, honesty and integrity or has undesirable or unsatisfactory financial sources.

10) The applicant has or is able to obtain the services of persons who have sufficient experience in the management and operation of a casino.

5.39 The application for a licence to operate a resort casino would be linked inextricably to the premises in which the casino is to operate. There can be no question of a licence being transferred from one premises to another, or held by a licensee as a form of equity. The licence cannot become in the nature of a tradable commodity, it would be a "use it or lose it" situation.

5.40 Failure to discharge the obligations, duties and conditions imposed by a licence would result in monetary sanctions being imposed, or in a licence being suspended for a specified period of time, and for serious breaches of the conditions attached to the licence, its revocation. There would, of course be a right of appeal against decisions of the licensing authority. In cases where the decision of the authority is upheld, the penalties would be increased.

5.41 In a casino, every person who uses the casino - regardless of whether that is on a frequent or infrequent basis - would be entered in a registered database maintained by the licensee. The identity of each customer must be verified prior to registration and this must be achieved by the production of approved identity documents, including photo ID documents. The approved photo ID documents would be stipulated in primary legislation. The registered database should in all cases be capable of accommodating biometric information on the customer. It would be an important principle of casino regulation that casinos operate "know your customer" procedures.

5.42 Subject to the provisions of the Data Protection Acts, provision would be made so that certain details of every customer of a casino may be shared with the Casino Control Unit of the Department of Justice and Law Reform, the Revenue Commissioners, An Garda Síochána, other State authorities and other casinos in the State. The reasons for the sharing of information would be stated to include:

- to assist in the prevention, detection and prosecution of crime, including the crime of money laundering,

- to assist the Revenue Commissioners combat tax evasion;
- to protect individuals who have declared themselves to be problem gamblers, by enforcing universal self-exclusion;
- to enforce the prohibition on banned individuals.

5.43 The data in question could be made anonymous, so that in the sharing arrangements with other casinos, for example, actual personal data is protected as far as possible.

5.44 Appropriate powers would be available to the Minister to ensure that a casino application could not succeed in residential areas or close to schools, colleges or other relevant places. The Act would also give the Minister the power to place a cap on the number of Registered Casinos permitted either nationally or in a particular locality, and where such a cap is in force, no application for a licence to operate a casino in that prohibited area would succeed.

Conclusion

5.45 A licence to operate either a registered or a resort casino would not be acquired with any degree of ease. It would only come about following a thorough and searching appraisal of the positives and negatives surrounding such a development. There must be significant and continuing benefits accruing locally or regionally as a result of the grant of a licence for a resort casino, as well as a return directly to the exchequer in terms of taxes. The highest standards of player protection would have to be maintained at all times. This means that such venues would not be permitted to be places of "drop-in" casual gambling. There could be no inducements, such as bussing of customers to the venue, permitted. A resort casino, in particular, would be a place where people typically make a conscious effort to visit, and consequently is a visit which is more likely to have been budgeted for and planned in advance.

6. BETTING

6.1 Any new regulatory architecture for gambling would provide a definition of betting and bring betting under a common regulator along with gaming and lotteries. The fundamental principles of the Betting Act 1931 need not be significantly changed in terms of the licensing process. Companies offering financial spread betting are currently regulated by the Financial Regulator. This leaves the position of companies offering sports spread betting out on a limb. In Great Britain these are regulated by the Financial Regulator, following a court determination that the product offered was in the financial services realm. Consideration would have to be given to how best to regulate sports spread betting in this jurisdiction, without creating regulatory overlap.

6.2 Betting Exchanges would, however, be regulated and subject to licence. These typically offer over the internet a form of person(s)-to-person(s) bookmaking where the customer can "lay", that is bet that something will not occur (the position bookmakers have traditionally taken when offering a bet), as well as back a particular outcome to happen (the traditional "bet").

6.3 The review process has been advised from some quarters that betting exchanges are being used for some bookmaking activities that go far beyond what could be regarded as the activities of individuals engaging in a simple wager. A betting exchange may, for example, be used by some bookmakers as a way of laying off some bets. If the bookmaker is a licensed bookmaker, then this is not an activity that need merit attention. After all, licensed bookmakers, when a large bet comes in, routinely try to lay off the risk by buying bets from other bookmakers.

6.4 On the other hand, where individuals are engaged in significant activity in a betting exchange, which might, if it were to occur off-line, be regarded as running an unlicensed bookmaking operation, then the State should be able to intervene, if only from a regulatory and taxation perspective.

6.5 The Betting Act 1931 and associated enactments could be repealed and re-enacted to form the basis of the regulatory environment for betting, and be built upon in the Act. The existing role allocated to the Garda Síochána, in respect of certification of certain bookmakers, is likely to continue to operate, in conjunction with a revised licensing arrangement under the Minister for Justice and Law Reform.

6.6 The distinction between betting and gaming should be maintained, and gaming machines not permitted on licensed bookmaking premises. This should put an end to the controversy over Fixed Odds Betting Terminals. However, bookmakers should be permitted to exploit technological advances so that any product or service normally permitted over the counter may also be offered through terminals. In that context, the definition of betting would be wide enough to accommodate betting on virtual events - something that has been a feature of the Irish betting scene for some time now.

6.7 The Minister could also take powers to provide by way of secondary legislation for such matters as opening hours of premises, advertising of products, and any other matter.

7 REMOTE GAMBLING

7.1 A new regulatory architecture should recognise and accommodate the significant technological changes that have taken place since 1956 (and earlier). Nowhere has change occurred more quickly and in as sustained a way as in the relatively new area of remote gambling.

7.2 Gambling needs to be regulated even in circumstances where the player is not present on the operator's premises i.e. a licence to authorise the provision of gambling via remote means. By "remote gambling" is meant gambling of any kind where the participants are not face-to-face on the same premises and where people are participating by means of some form of remote communications device such as over the internet, by land-line phone or mobile phone, and interactive television. Remote gambling exemplifies the need for any new gambling legislation to be very much technology neutral, so that unforeseen technological developments are captured. Existing practice where a "traditional bookmaker" may accept a bet from a customer over the telephone would not constitute remote gambling.

7.3 A revised regulation of gambling should also ensure that even a remote operator who is not established in the jurisdiction and who has no presence in the jurisdiction must have a licence or other authorisation from the Minister for Justice and Law Reform if it has Irish-resident customers. Likewise, a remote gambling operator who is operating its business from Ireland, and who has no Irish resident customers (however implausible that may be), would need to have a licence. No licence offered by the Irish regulatory system, however, should purport to grant any gambling operator freedom to offer its products into any other jurisdiction, without its having a licence to operate in that jurisdiction. The licensing standard would be high and would require character and other tests similar to those envisaged in respect of casino licences.

7.4 *Regulating Gaming in Ireland* held the view that censorship of the Internet in an effort to achieve [control over internet gaming] *is frequently self-defeating, is unlikely to achieve the intended results, leads to the diversion of scarce law enforcement resources and frequently has unintended and undesirable consequences.* The authors rather saw the issue of remote gaming as one that was a reality and that *the appropriate questions that governments should ask are: "How can this activity be properly regulated? What will the consequences be of trying to do so?"* This approach very much mirrors a statement attributed to US Congressman Jim McDermott: "Prohibition in various guises has failed before and is failing once again. There is a better way" in reference to the US ban on internet gambling.

7.5 Remote gambling is truly a global phenomenon, and it would be facile to believe that Ireland could devise a regulatory framework that would find universal favour: there are too many diverging attitudes to gambling for that to happen. It is also clear that remote gambling is a growing phenomenon that will not go away and which may well be incapable of full regulation. That does not mean States should not make their own best efforts to ensure that as far as is possible, the reach of remote gambling within their own jurisdictions

is in accordance with acceptable standards and norms. The aim of the regulatory system, therefore, should be to favour remote gambling companies that submit to a licensing standard.

7.6 There are some data on the value of the remote gambling sector. According to H2 Gambling Capital the global gambling industry in 2008 in terms of Gross Gambling Yield (stakes less prizes) was worth some \$336 Billion and that remote gambling amounted to some 7.1% of that, projected to rise to 9.4% by 2012.

7.7 There is no doubt that many aspects of gambling - particularly internet and other server-based gaming and betting operations - can now be seen in terms of the smart economy, representing significant investment in ICT infrastructure. There are some good examples of the actual contribution of the industry to the smart economy already. There is little doubt that the potential exists for the State to grow investment in this area. In a nutshell, the State could reap a dividend from companies using Ireland as a base for remote gambling operations in terms of the employment and other positives that would flow. This view was strongly put forward in *Regulating Gaming in Ireland* which recommended:

The current state of development internationally of regulation of remote gaming, particularly the recent United States prohibition of payment mechanisms for gambling online, presents a window of opportunity for Ireland. The Committee recommends that the appropriate regulatory authority (in conjunction with other relevant Government Departments) address the consequential regulatory challenges and provide a socially responsible and secure arena for the development of remote gaming based in Ireland. Should this opportunity be grasped within the appropriate timescale, Ireland, as a gaming friendly centre of excellence, can reasonably expect to attract a reasonable portion of this dynamic industry, therefore yielding significant synergistic benefits as well as employment opportunities.

7.8 The treatment of the remote gambling sector from a tax perspective - see Chapter 12 below - would undoubtedly impact on the potential dividend. However, it would be important to state that the aim of any gambling regulation is not to attract inward investment. It is rather to ensure that gambling is conducted in a highly regulated environment that has as a primary objective the protection of customers.

8. GAMING MACHINES

8.1 A revised regulatory system should introduce a new regime for gaming machines. A definition of gaming machine should be provided, as well as provision to prescribe various categories of gaming machine. Stakes and payouts would be tied to the categories of machine and the category of machine permitted would depend on the licence in force. Specifically, the higher the category of gaming machine the higher the maximum stake and consequently the higher the possible payout. The highest category of gaming machine would only be available in a casino. Special and specific provision would need to be put in place in respect of gaming machine areas attached to a casino.

8.2 The Finance Act 1992 gives a definition of an amusement machine (as opposed to a gaming machine) which provides for the possibility for a player to win a non-monetary prize up to the value of €7. The issue in a revised regulatory regime has to be whether such a machine is in fact a gaming machine, because it offers the player the possibility to win something other than the opportunity to continue playing the machine - this would not be an untypical element in the definition of a gaming machine.

8.3 While it may create some definitional difficulty it does seem that it makes sense to treat a machine which offers the possibility of cash or other prize as falling within the category of gaming machine, and to restrict the definition of an amusement machine along the lines offered in *Regulating Gaming in Ireland*, i.e. an Amusement Machine means a mechanical, electrical or electronic machine or device, operated by the insertion of a coin or amusement machine token or by the use of credits, which is intended exclusively for amusement purposes and not for gambling purposes and from which the player can obtain nothing representing money, goods or any other benefit other than the opportunity to continue to use the machine.

8.4 In this context, machines that offer some form of prize in lieu of cash would be classified at the lowest end of the gaming machine scale and would be permitted in Licensed Amusement Centres.

8.5 A total ban on certain categories of gaming machines in any premises other than a licensed gaming premises should be a feature of a revised regulatory system. In particular, such gaming machines would not be permitted in pubs, restaurants, public areas, for example train station waiting areas or concourses, shops or other retail outlets. The law would provide for heavy penalties in respect of illegally placed gaming machines.

8.6 Once again, *Regulating Gaming in Ireland* provides some assistance towards setting out illustrative categories of gaming machine and the suggested maximum stakes and winnings.

8.7 In the illustration below, the Grade 1 category would be restricted to casinos, Grades 2a to 4 could be located in Adult Gaming Centres, while Grades 3 and Grade 4 machines represent the type that could be available in Licensed Amusement Centres (See Chapter 9

below).

| Category / Grades of Gaming Machine | Max Stake | Max Win |
|--|---------------------------------------|------------------------------------|
| Grade 1 | > €5 | > €5,000 |
| Grade 2a | €5 | €5,000 |
| Grade 2b | €3 | €1,000 |
| Grade 2c | €2 | €500 |
| Grade 2d | €1 | €100 |
| Grade 3 | €1 | €50 |
| Grade 4 (AWP) | 50 cent or €1 when non-monetary prize | €10 cash or €20 non-monetary prize |

9. LICENSED GAMING CENTRES

9.1 The Report *Regulating Gaming in Ireland* held the view that gaming machines should be regulated and controlled and should be in an appropriately regulated and licensed environment. It also pointed out that having gaming machines outside such regulated environments could increase the incidence of gaming in a fashion which is socially undesirable. The Report recommended, therefore, that gaming machines should only be permitted in the licensed environment of a casino or gaming arcade, and should not be permitted in licensed bookmakers' offices, shops, take-away outlets, restaurants, hotels, public houses or any other premises.

9.2 The strict regulation of gaming machines and their location only in regulated environments is supported by industry representatives.

9.3 The revised regulatory Act could elaborate on this recommendation by introducing the concept of licensed Gaming Centres, of which there would be two types:

- Adult Gaming Centre
- Amusement Centre

Adult Gaming Centre

9.4 An Adult Gaming Centre would, as the name suggests, be restricted to persons over 18 years of age. Such centres would be permitted to offer a range of gaming machines up to a maximum number. No table games, of the type that would be associated with a casino, would be permitted in such establishments. Betting would not be permitted on these premises.

9.5 The current gaming law requires that places licensed to allow gaming should also provide other forms of entertainment. While the reason for this was most certainly to lessen the impact of gambling, it may well have failed to meet that objective, particularly as there was no impediment on children being on such premises. Indeed the most common "non-gaming machine" entertainment offered in such establishments is amusement machines of various types that persons of all ages can play. A recent development would suggest that the other form of entertainment might be internet cafe-type development, which opens up the possibility of other forms of gambling taking place in a licensed gaming environment.

9.6 The objective in future would be to remove any possibility that persons under 18 years can be placed in a situation where they can access a premises with the full range of gaming machines.

Amusement Centre

9.7 An Amusement Centre would also require a licence. An Amusement Centre would have a range of gaming machines of the lower categories, including the amusement with prizes category. It must also have amusement machines, which would be defined in the Act. Children and young people under 18 years would be permitted to be on such premises and to

play the machines. Children, i.e. defined as persons under 16 years of age would only be permitted on such premises only if accompanied by a responsible adult (parent or guardian) and would be permitted to play amusement machines, only. Young people, i.e. under 18 year olds would be permitted on the premises and to play the amusement machines. Young people under 18 would not be permitted to play any form of gaming machine.

9.8 A consequence of this form of regulatory approach would mean that some machines that are currently available in shopping centres and other places (e.g. crane grab machines) would no longer be permitted in such areas, as gaming machines could only be placed in licensed areas. In addition, as with registered casinos, the location of such centres would be controlled.

10. LOTTERIES

10.1 Under current law a lottery must be promoted by a charitable or philanthropic body and no personal profit can accrue to the promoter. Lotteries can, therefore, and in fact do represent a significant revenue stream for the charities sector and voluntary bodies such as community groups and sporting organisations. It would not be the intention that revised systems to regulate gambling would disadvantage such bodies; therefore the link between lotteries and charities and philanthropic bodies should not be altered. The circumstances under which lotteries are permitted would need, however, to be brought up to date.

10.2 Generally speaking lotteries are regarded as being at the "soft side" of gambling, and while they do, if taken in terms of total sales, have a very large participation rate they are not generally associated with problem gambling, but neither are they immune, particularly where they offer large cash prizes on an instant basis. Furthermore, some lotteries can generate large amounts of money for promoters and it is right that the public are protected against unscrupulous operators. Therefore, where a lottery is being sold to the general public it would require a permit or licence.

10.3 As things stand five main types of lottery are permitted:

1. Lotteries limited to members of a society or those working or residing on the same premises - no prize limit.
2. Lotteries conducted in conjunction with a dance/concert or a like event.
3. Lotteries promoted in conjunction with a circus, carnival or travelling show or at a licensed amusement arcade or funfair.
4. Lotteries operated under a permit issued by a Garda Superintendent.
5. Lotteries operated under a licence issued by a District Court.

10.4 Lotteries under 1, 2 and 3 above do not currently require a licence or permit. There can be some circumstances when a very small lottery, confined to a very specific group might be useful. Therefore any revised regulation of lotteries would provide for exempt lotteries as well as lotteries by permit.

10.5 The following categories are proposed for lotteries:

Category 1 - Exempt lottery:

- 1(a) Lotteries limited to members of a society or those working or residing on the same premises - no prize limit,
 - 1(b) Lotteries conducted in conjunction with a dance/concert or a like event,
 - 1(c) Lotteries with a maximum prize fund of €1,000, limited to one lottery per month,
- would not require a licence but would be subject to regulations set out by the Department of Justice and Law Reform.

Category 2 Lottery with Permit

Lotteries with a maximum prize fund of €5,000 per month, complying with requirements as set out in regulations by the Department of Justice and Law Reform and operated under a permit issued by the Department of Justice and Law Reform.

Category 3 Lottery with Permit

Lotteries with a maximum prize fund of €50,000 per week, or €250,000 per month, complying with requirements as set out in regulations by the Department of Justice and Law Reform and operated under a permit issued by the Department of Justice and Law Reform.

Category 4 Promotional Lottery

This would be a new category of lottery, complying with requirements as set out in regulations and operated under a permit issued by the Department of Justice and Law Reform. It would deal with lotteries operated in conjunction with a sales or marketing drive. For such a lottery, there can be no charge (hidden or otherwise) to the customer taking part.

10.6 The law should, of course, contain a definition of a lottery. This would be important and it would be aimed at creating certainty around what does or does not constitute a lottery. In this context, consideration should be given to including in the definition of a lottery certain interactive games on TV which contain a number of processes before a contestant is asked to answer a question of skill, or is given an opportunity to give an answer to a previously asked question.

11. BINGO

11.1 Bingo was found to be a lottery in Irish law (*Bolger v. Doherty*, Supreme Court, 22 January 1965. [1970] I.R. 233) and therefore can only be permitted where the promoter is a charity or other philanthropic body. Commercial Bingo is a very popular pastime, and on the internet is one of the fastest growing pastimes, attracting huge audiences and participation. There is a certain demand for Bingo in Ireland, and the question is whether commercial Bingo should be permitted.

11.2 The insistence on maintaining a link between the promotion of Bingo and charitable or philanthropic purposes is, of course, eminently possible in land-based situations. This is not the case on the internet where Bingo is routinely offered by most commercial gambling providers.

11.3 A revised regulatory system for gambling would licence remote gambling providers. The possibilities are that: (a) Remote gambling providers selling into the Irish market are not permitted to offer Bingo, or (b) Bingo is removed from the definition of a lottery and given its own definition with a view to permitting its promotion commercially, or (c) it becomes a condition of a licence that for a remote gambling website to offer Bingo to Irish customers it must "partner" with an Irish charity or philanthropic body - essentially what happens to some extent in the land-based Bingo environment.

11.4 It is difficult to see how, in the online environment, a regulatory system could insist on an off-shore gambling provider tailoring its product to the extent that it could not offer Bingo to its Irish customers, or indeed insisting that a remote gambling provider would share the proceeds of its Bingo operation with another organisation. Apart from the compliance costs involved in making special arrangements for the Irish market, a prohibition on offering Bingo would, if it were implemented by compliant operators, in all likelihood, only serve to drive customers to unlicensed operators, putting compliant providers at a commercial disadvantage.

11.5 There is no easy solution to this matter; it requires a decision that will not find favour with all. The revised regulatory regime could remove Bingo from the definition of a lottery. This would permit Bingo to be offered on a purely commercial basis as far as the online environment is concerned. However, the link with charitable or philanthropic purposes as far as land-based Bingo goes would be continued, for a period of time, after which Bingo, following a review by the Minister for Justice and Law Reform, might be permitted as a commercial activity, as with gaming.

11.6 In those circumstances, Bingo would ultimately become a licensed activity, capable of being delivered in stand-alone Bingo Halls, or in Adult Gaming Centres, or, as heretofore, by charities or local community groups.

12. TAXATION

12.1 Taxation policy, being a matter for the Minister for Finance, does not command any place in the review of gambling regulation, in that the reason for the review is to ensure that commercial gambling is conducted only in a regulated environment. However, it is clear that taxation policy can affect commercial decisions by companies operating in this field. This message has been communicated to the review on more than one occasion and by different entities. There would appear to be little point in developing and maintaining a comprehensive regulatory framework for gambling if through its taxation policy a State puts companies at a disincentive from establishing themselves in or selling into the market. The tax treatment of on-line and off-line gambling is a matter that has to be carefully considered.

12.2 Gambling, however, is an activity that is at its best a form of entertainment and a discretionary expense; and at its worst a form of compulsive behaviour that causes problems for individuals and families. For this reason, alone, it is an activity that should be subject to special taxation measures so that the efforts of the State to address the downsides are financed from the activity itself, where, for example, compulsive gambling behaviour results in public health costs falling on the Exchequer. The arrangement whereby some of the proceeds of a betting duty are devoted to financing aspects of the horse and greyhound industries is not untypical of the arrangements made in other jurisdictions. There are of course many other deserving causes that can put forward cogent cases as to why some of the proceeds of a betting duty might also be devoted to financing their activities. How the yield from a betting duty or from a gambling tax should be used is a matter for the Government to determine on an ongoing basis.

12.3 All forms of gambling (excluding lotteries, because of their size and nature) could be subject to a form of gambling tax, payable in addition to other taxes by the organisation selling the product. There are many methods by which such a tax or duty might be applied including various levels of a licence fee, a tax or duty based on turnover (the amount staked), on winnings, on gross profits (stakes less payouts) or on commission (in the case of exchanges) or indeed a combination of such approaches.

12.4 The suggestions to remove from the remit of the Revenue Commissioners a role in the licensing arrangements of gaming machines do not mean no revenue would accrue to the State by way of gaming duty on such gaming machines. In relation to gaming, at least, it is suggested that in lieu of the fixed excise duty per gaming machine a gambling tax might be levied based for example on the gross profits concerned.

12.5 The taxation arrangements for the casino sector would be analogous and might be based on levying a gambling tax at various progressive rates on gross gaming revenue - i.e. total amount gambled net of winnings.

12.6 Remote gambling operations, whether established in the State or not, or partly established in the State and partly outside the State should be required to obtain a licence.

Such entities should as a matter of equity be subject to a gambling tax in respect of gambling products sold into the Irish market.

12.7 Gambling is a significant global industry and Ireland is seen as an attractive location for this sector due to an abundance of the desired skills, a stable tax and business environment, good IT infrastructure and networks for a global business. It should be recognised that besides the betting duty, firms offering gambling products, including betting, are subject to the normal range of taxes that apply to other firms. A properly regulated sector, in conjunction with a low taxation system on gambling products could give Ireland an advantage in terms of attracting these types of investments, with consequential employment opportunities. Such a development would be congruent with the Government's 'smart economy' initiative with most of the jobs at the high-skill level.

12.8 The taxation arrangements to be applied to gambling, and various forms thereof, would be considered in parallel with the development of the new regulatory framework.

13. **CONCLUSION**

13.1 No one doubts that our gambling laws are in need of reform. The objective must be to ensure that any reform is balanced, recognising the potential harm that the activity can cause, while acknowledging the fact that it is also a form of entertainment for many people.

13.2 Neither can we ignore the potential economic benefits that could flow from a well-regulated gambling architecture that aims to be a standard-maker in terms of tackling the remote gambling market.

| Tabular Comparison of Casino Regulatory Measures in Force in certain EU Countries | | | | |
|--|---|---|--|--|
| Country | No. of casinos licensed | Who decides where the casinos should be located | Taxation details | Who awards/issues licences |
| Austria - a quasi State monopoly exists, supervised by the Ministry of Finance. | 12 casinos are licensed to operate at present, each licence lasts 15 years | The State | Scale of taxes of 35% to 80% based on stakes minus winnings | Casinos Austria AG granted the exclusive licence by the Government. |
| Denmark - there is no State monopoly, per se, but see column 3 | 6 casinos are licensed to operate - each licence is of a 10 year duration. | Danish law permits that casinos must be located in larger hotels and also which hotels. | Gross gaming revenue tax of 45% | Minister for Justice grants the permits/licences |
| Germany - a State monopoly exists here | 84 casinos are licensed to operate at present. A licence term of 10 years is the norm. In some regions, a licence term may be extended for a further 10 years | Governed by the legislation of the 16 German regional Lander. The licence determines who may operate the casino and in which commune/local location it may be operated. | VAT is payable since 28 April 2006. Casinos are exempt from trade taxation and usually from income tax. | Ministry of the Interior. Authorisation of additional casinos subject to Government regulation requiring consent of Parliament |
| Italy - a State monopoly exists. | 4 casinos are licensed to operate at present - geographic exclusivity granted. | The State | Taxes are calculated on the revenues collected rather than on the operator's margin, and is a complex operation. | Ministry of the Interior |

Tabular Comparison of Casino Regulatory Measures in Force in certain EU Countries

| Country | No. of casinos licensed | Who decides where the casinos should be located | Taxation details | Who awards/issues licences |
|---|---|--|--|--|
| Netherlands - a State monopoly exists here | 14 casinos are licensed to operated at present. | The State | A tax of 40.85% is levied on the gross gaming revenue generated by casino gaming | The Minister for Justice. The current licensee of casino games is Holland Casino. |
| Portugal - a State monopoly exists here | 8 casinos are licensed to operate at present. | The State | The tax for casino gaming operations fluctuates according to the region where the casino is located - between 30-50% of their gross revenue. | The State Secretariat for Tourism, and permanently monitored by Turismo de Portugal's inspectorate for tourist gaming. |
| United Kingdom (excluding Northern Ireland) | No more than 1 regional, 8 large and 8 small casinos may exist at any one time, under 2005 Gambling Act. A further 140+ casinos exist predating that law. | The Government has to approve new casinos and their locations. Existing casinos also a matter of statutory decision. | Based on gross gaming yield | The Gambling Commission awards personal and operating licences. Local Authorities award licences for premises.. |

