

Submission of Paddy Power plc to the Committee on Justice, Defence and Equality in relation to the Heads of Gambling Control Bill 2013

1. Introduction

- 1.1 Paddy Power plc (Paddy Power) is one of the world's best known sports betting and gaming brands. Headquartered in Clonskeagh, Dublin, Paddy Power is a publicly quoted company, listed on both the Irish and London Stock Exchanges with a market capitalisation of nearly €3bn. We employ over 4,100 globally with 2,338 employees currently based in Ireland.
- 1.2 Paddy Power offers a variety of B2C and B2B gambling and gaming products and holds gambling licences in Ireland, Northern Ireland, Great Britain, Italy, Australia, British Columbia and Nevada. This affords us with what we would consider a unique position in an Irish context in relation to our knowledge of and understanding of regulatory regimes and gambling regulation worldwide. We have an impeccable compliance record in the jurisdictions in which we operate and are happy to offer our expertise of the sector and provide the benefit of our international experience to the Committee.
- 1.3 Paddy Power fully supports any measures that help ensure that operators serving Irish customers act legally and responsibly, particularly in relation to consumer protection. We generally welcome the publication of the General Scheme for the Gambling Control Bill 2013 (the "**Scheme**") and believe it is a welcome first step to creating a modern, regulated environment for gambling in Ireland.
- 1.4 We note that while the Scheme contains substantial detail, it is incomplete in some material respects. We feel that there needs to be significant further clarity in any future draft legislation and we hope that the views in this submission will be of assistance in this regard.

2. Establishment of the OGCI (Heads 5 - 14)

- 2.1 Paddy Power welcomes the proposal to establish the Office for Gambling Control Ireland in Part 2 of the Scheme. We believe that an empowered and pragmatic regulator is essential for the growth of a modern and safe gambling industry. The establishment of a modern regulatory regime governing remote betting is likely to be well received internationally and will also remove some of the anomalies which exist under current outdated legislation.
- 2.2 While we note that the OGCI will be located within the Department of Justice and Equality, it is important that it will be in a position to operate, and be seen to operate, independently in keeping with best regulatory practice. The inter-relating and overlapping roles of the Minister and the OGCI could perhaps be further refined in the future iterations of the Scheme.

3. A Clear, Dynamic Regulatory Approach

- 3.1 We agree with the principle that flexibility and technology-neutrality will be a key element of any successful regulated environment. Any legislation should

therefore avoid being over-prescriptive or so granular that it is unable to adapt to the fast-moving pace of change in the gambling industry.

- 3.2 We are concerned that enshrining inflexible standards in primary legislation and/or requiring Ministerial orders to effect day to day change potentially stifles the effectiveness of the Scheme. While the Scheme anticipates the delegation of powers and functions to the OGCI, we believe that the scope of the OGCI's role and the independence of its functions need further clarity. For example, the OGCI should be expressly granted broad powers to adopt Codes of Practice and Codes of Conduct (as appears to be contemplated by Head 7) as well as the Guidance Notes referred to in Head 15. We would suggest that the scope of such Codes should not be narrowly construed (as they are in Head 10) so that the OGCI can quickly respond to market developments without having to seek Ministerial orders or changes to primary legislation.
- 3.3 We would also suggest that the procedure for adopting such codes/guidance should require prior consultation with licensees and other stakeholders with a view to ensuring that Ireland's regulatory framework remains current and relevant.
- 3.4 One area where on-going consultation with industry is particularly important is in the area of advertising and promotion across both traditional and emerging media platforms. We feel it is important that the Scheme gives the OGCI the flexibility to adopt rules that reflect the standards of the day. Heads 72 - 74 of the Scheme prescribe a number of very specific restrictions, breach of which would constitute a criminal offence carrying a summary penalty of up to 6 months imprisonment for the licensee and/or the broadcaster. For example, a failure to remove online promotional material within 12 hours could trigger a summary prosecution and sponsorship of an adult sports team which has one 17 year old player would infringe Head 74. We would respectfully query if such granular restrictions would be workable in practice.
- 3.5 In other industries, advertising standards are enshrined in industry codes of practice. One of the main advantages of implementing an industry code (overseen by an effective Regulator) is that they can be flexible and updated to maintain their relevance in light of technological improvements and changing societal norms. For example, the advertising sector in Ireland generally is governed by the Advertising Standards Authority for Ireland (ASAI) Code of Standards for Advertising, Promotional and Direct Marketing in Ireland. This Code is widely adhered to and, currently in its 6th edition, has been revised on a number of occasions. We understand from speaking with the ASAI that it is anticipated that there will be a gambling specific section in the next edition of the Code. We believe there would be merit in empowering the OGCI to adopt Codes of Practice (potentially in conjunction with the ASAI) in relation to advertising and promotions under Head 10 which are not subject to granular levels of potentially unworkable restrictions under the primary legislation.

4. Creation of Player Protection Measures (Heads 67 - 71 and Head 76)

- 4.1 Player protection is an integral part of any regulated environment. Paddy Power is committed to meeting the standards of player protection in all

jurisdictions where it operates. Accordingly, we welcome the player protection measures which are proposed in Heads 67, 70, 71 and 76 and we would welcome the opportunity to discuss with the Department how to ensure that such measures can operate effectively.

4.2 In particular, we note the intention for the OGCI to establish a self-exclusion register (Head 71). Paddy Power is committed to providing effective self-exclusion measures for customers but it is widely recognised that there are serious challenges in ensuring that multi-operator self-exclusion schemes work for both individuals and operators and we are concerned that these are potentially unworkable in a retail environment.

4.3 We also look forward to engaging with the Committee and the Department of Justice to clarify the precise scope of the proposals in relation to credit (Head 68), player cards (Head 69) and payment mechanisms which we feel would benefit from greater clarity.

5. **New Licensing Regime for Gambling Products (Heads 15 - 53, Schedules 1 and 2)**

5.1 We note the extensive new licensing regime which is proposed for gambling products. As presently drafted, some of these licensing requirements may be interpreted in a number of different ways. We look forward to working with the Department to clarify the precise scope of the new licensing requirements and to explore possible opportunities to streamline the licensing regime (e.g. group licences (Head 25), applications (Heads 31 - 39), scope of personal licences (Heads 41 - 42), extending the duration of licences and automating renewals etc.). We believe it should be possible to maintain the regulatory protections set out in the Scheme while minimising bureaucracy and encouraging compliance.

6. **Gambling Products in Non-Regulated Environments**

6.1 We also note in Heads 17 and 26 that provision is being made for non-traditional venues (potentially including a broad range of retail establishments such as takeaways and bars) to host gaming or amusement machines. This would mark a significant departure for Ireland as, under the new regulatory environment, gaming products such as slot machines would potentially be available in premises which have not traditionally been the subject of regulation. We would welcome the opportunity to explore how the Department envisages the roll-out of other types of gaming products in retail establishments and how player protection and enforcement measures would work in these new environments.

7. **Proportionality**

7.1 We welcome the introduction of a tiered enforcement mechanism with proportionate sanctions. We believe that the principle that for those licensees who are found to have been in breach on a non-material issue the use of an “infringement” procedure under Head 61 is proportionate. At the other end of the scale, we welcome the availability of the various “blocking” measures to

the Chief Officer of the OGCi under Head 58 to shut down non-compliant operators. Effective enforcement mechanisms are critical to deter blatant non-compliance with the Scheme. The OGCi needs to be well resourced to identify and pursue those who choose not to comply with the new licensing regime and to ensure that the powers vested by Heads 58 are exercised in practice.

- 7.2 The Scheme includes a multitude of prosecutable offences, many of which may be pursued on a summary basis against individuals. It may be worth exploring if it is necessary to underpin all of the offences in the Scheme by reference to a court prosecution or whether, as an alternative, less draconian measures might be adopted in certain cases. For example, administrative penalties such as a “rebuke” (Head 64(9)) for less serious or first offences might be considered which would allow enforcement by specialist regulators in the first instance rather than burdening the criminal justice system with prosecutions. This approach echoes suggestions made in the Government Policy Statement on Sectoral Economic Regulation¹ which highlights the potential relevance of civil fines and other enforcement tools in other regulated sectors of the economy.
- 7.3 The Department might also consider if the provisions governing personal liability on the part of personal licensees or other individuals should only apply in circumstances where the usual rules governing the vicarious liability of an employer for the acts of its employees would not achieve the same effect.

8. Compliance Costs (Heads 43 – 47)

- 8.1 The Scheme does not yet provide detail in relation to the financial costs of compliance, nor does it address the key issue of taxation. Clearly the various costs associated with compliance (gambling taxes (unknown), licence fees (Head 43), reserves (Head 28), securities (Head 46), complaints fund (Head 75), contribution to social fund (Part 7) etc.) will need to be set at a level which encourages compliance by all operators who offer gambling facilities to Irish players. Given the relatively modest size of the Irish market in an international context, any excessive costs increases the risk of widespread non-compliance by off-shore operators. It would also be a concern if the various revenues derived from the Scheme were significantly greater than those which are necessary to fund the OGCi as this would be likely to make Ireland cost uncompetitive.
- 8.2 Paddy Power has always been committed to acting fairly and operating the most robust and stringent practices in the industry with regard to responsible gambling and age verification. We therefore support the principles behind the establishment of the Social Fund. We are concerned however by the proposal to apply the contribution to the Social Fund based on turnover (Head 80) given the intense international competition for online gambling and the narrow margins which generally apply for gambling products. We would encourage the Department to explore models from other jurisdictions that have similar systems in place which are working effectively, for example the UK where

¹ http://www.taoiseach.gov.ie/eng/Publications/Publications_2013/Policy_Statement_on_Economic_Regulation_2013.pdf

operators contribute voluntarily to the Responsible Gambling Trust (RGT) on a flat rate based on scale.

9. Compatibility with the Betting (Amendment) Bill 2013

9.1 We assume that it is the intention of government to introduce the Betting (Amendment) Bill 2013 prior to enacting a Gambling Control Bill. From an operational perspective, it will be important that those operators who are subject to both pieces of legislation (e.g. bookmakers, remote bookmakers and remote intermediaries) are able to do so in a seamless manner. As operators may need to adopt operational changes to comply with new regulatory regimes in Ireland and elsewhere, a consistent and predictable approach which enables operators to plan for and to implement new licensing requirements with minimum difficulty would be welcome.

9.2 In this regard, it would be helpful if the defined terms and principles which are established in the Betting (Amendment) Bill 2013 were carried forward into the Scheme. For example, the proposed definitions of “Betting Exchange” and “Licensed Bookmaker” should be aligned with the equivalent categories of licensed operator which are to be created by the Betting (Amendment) Bill. To enable operators to more easily comply with any new licensing requirements, Ireland should also ensure that it does not adopt terms that are incompatible with those used in other regulated jurisdictions where compliant operators are likely to also operate (e.g. the UK). We would be pleased to submit more detailed proposals for consideration by the Department in due course.

10. Conclusion

10.1 Paddy Power is grateful to the Committee for this opportunity to present its views on the Scheme and we would be happy to contribute further to the consultation process.