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*Number 13 of 2013*

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**NATIONAL LOTTERY ACT 2013**

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Local Government Act 2001 (No. 37)  
Minimum Notice and Terms of Employment Acts 1973 to 2005  
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Organisation of Working Time Act 1997 (No. 20)  
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Taxes Consolidation Act 1997 (No. 39)  
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*Number 13 of 2013*

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## **NATIONAL LOTTERY ACT 2013**

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An Act to provide for the holding of a national lottery on behalf of the Minister for Public Expenditure and Reform, to establish the Office of the Regulator of the National Lottery and to define the functions of the Regulator, to repeal the National Lottery Act 1986, to amend sections 27 and 28 of the Gaming and Lotteries Act 1956 and to provide for connected matters. [14th May, 2013]

**Be it enacted by the Oireachtas as follows:**

### PART 1

#### PRELIMINARY AND GENERAL

##### **Short title, collective citation and commencement**

1. (1) This Act may be cited as the National Lottery Act 2013.
- (2) The Gaming and Lotteries Acts 1956 to 2003 and *Part 9* may be cited together as the Gaming and Lotteries Acts 1956 to 2013.
- (3) This Act comes into operation on such day or days as the Minister may by order or orders appoint either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or provisions.
- (4) An order under *subsection (3)* may as respects the repeal of the National Lottery Act 1986 under *section 3* appoint different days for the repeal of different provisions of that Act or for the repeal for different purposes of such provisions.

##### **Interpretation**

2. In this Act—

“breach” in relation to this Act or a term or condition of a licence includes a failure to comply with it;

“central gaming system” comprises the secure core computer systems of hardware and software that validate and record all entries for National Lottery games and identify winning combinations;

“company” means a company formed under the Companies Acts;

“Fund” means National Lottery Fund continued by *section 44*;

“hold”, in relation to a national lottery, includes establish, promote, organise and conduct;

“interactive channels” means communications over the internet that use any device from which the internet is able to be accessed;

“licence” means a licence granted under *section 26* to hold the National Lottery;

“licence holder” means the holder of a licence for the time being in force, and includes the operator where the operator is a subsidiary of the licence holder;

“lottery game” means any game, competition or other procedure, including those played by way of interactive channels on the internet, in which or whereby prizes (whether money prizes or otherwise) are distributed by lot or chance among persons participating in the game, competition or other procedure;

“manager” means a person appointed under *section 39(1)* in relation to the operator;

“Minister” means Minister for Public Expenditure and Reform;

“National Lottery” means any lottery game or combination of lottery games held by the Regulator or held under a licence in accordance with the rules contained in a scheme under *section 45* in relation to that game or each of those games;

“National Lottery ticket” means a ticket entitling its owner to participate in the National Lottery including a ticket sold by way of interactive channels on the internet;

“operator” has the meaning assigned to it by *section 29*;

“Regulator” means Regulator of the National Lottery, or in the circumstances referred to in *section 8*, the Minister;

“subsidiary” in relation to a company, means a subsidiary of the company (within the meaning of section 155 of the Companies Act 1963);

“winning ticket” means a ticket the owner of which is entitled to a prize in the National Lottery.

### **Repeal**

3. The National Lottery Act 1986 is repealed.

### **Laying of orders**

4. Every order made under this Act (other than an order under *section 1*) shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the order is passed by either such House within the next 21 days on which that House sits after the order is laid before it, the order is annulled, but without prejudice to the validity of anything previously done thereunder.

### **Expenses**

5. The expenses of the Minister in the execution of this Act shall be paid out of moneys provided by the Oireachtas.

## PART 2

## THE NATIONAL LOTTERY

**National Lottery**

6. (1) There shall be a National Lottery held on behalf of the Minister in accordance with the provisions of this Act.
- (2) Notwithstanding the repeal of the National Lottery Act 1986 by *section 3*, that Act continues to apply to the licence granted under that Act to An Post National Lottery Company until the termination of that company.

## PART 3

## REGULATOR OF THE NATIONAL LOTTERY

**National Lottery Regulator**

7. (1) There stands established the office of Regulator of the National Lottery and the holder of the office shall be known as the Regulator of the National Lottery and is referred to subsequently in this Act as the Regulator and whose functions are set out in this Act.
- (2) The Regulator shall be appointed by the Minister on such terms and conditions, including remuneration, as the Minister may determine.
- (3) The Regulator shall, subject to this Act, be independent in the performance of his or her functions.

**Minister to act as Regulator when position of Regulator is vacant**

8. The Minister shall perform the functions of the Regulator—
- (a) until the appointment under *section 7* of a person to hold the office of the Regulator, or
- (b) where the person who holds that office ceases to hold the office, until a person to be his or her successor to hold the office has been appointed under *section 7*.

**Functions of Regulator**

9. (1) The principal function of the Regulator shall be to procure the holding of the National Lottery—
- (a) by a person under a licence, or
- (b) where no licence is in force, under *section 10*.
- (2) The Regulator shall exercise his or her functions under this Act in such manner he or she considers the most likely to ensure—
- (a) that the National Lottery is run with all due propriety,
- (b) that the interests of participants in the National Lottery are protected, and
- (c) that the long term sustainability of the National Lottery is safeguarded.
- (3) Subject to *subsection (2)*, the Regulator shall in exercising his or her functions seek to ensure that

revenues allocated to the purposes, as provided for in *section 41*, are as great as possible subject to any terms in this regard contained in the licence.

- (4) The Regulator shall monitor and enforce compliance by the operator with this Act and the terms and conditions of the licence granted to the operator.
- (5) The Regulator may exercise the enforcement rights of any trade mark of the National Lottery under the Trade Marks Act 1996 or exercise such rights jointly with the licence holder.

#### **Power of Regulator to hold or procure holding of National Lottery when licence is not in force**

10. (1) The Regulator may hold or procure the holding of the National Lottery on behalf of the Minister in accordance with this Act, but the Regulator shall not hold or procure the holding of a lottery game at a time when a licence is in force.
- (2) The Regulator shall have all such powers as may be necessary or expedient for the purposes of the holding or procurement of the holding by him or her of the National Lottery and this Act shall, as respects the National Lottery if and when it is held by the Regulator, apply and have effect with any necessary modifications or adaptations in relation to the National Lottery if and when it is so held and to the Regulator as they apply and have effect in relation to the National Lottery held by the operator and to the operator.

#### **Term of office of Regulator**

11. The term of office of a person appointed to be the Regulator shall be for such term not exceeding 7 years as the Minister may determine and he or she shall be eligible for re-appointment to the office for one additional term.

#### **Resignation and removal of Regulator**

12. (1) The Regulator may at any time resign his or her office by giving notice in writing to the Minister of his or her intention to resign and any such resignation shall take effect as of the date upon which the Minister receives notice of the resignation.
- (2) A Regulator may be removed from office by the Minister—
  - (a) if, in his or her opinion, the Regulator has become incapable through ill health of effectively performing his or her duties, or
  - (b) for stated misbehaviour.
- (3) In removing the Regulator, the Minister shall give a statement of the reason or reasons for the removal to the Regulator and the statement of reasons shall be laid before each House of the Oireachtas.

#### **Restrictions relating to Regulator**

13. The Regulator shall cease to be the Regulator where he or she—
  - (a) is nominated as a member of Seanad Éireann,
  - (b) is nominated as a candidate for election as a member of Dáil Éireann, Seanad Éireann or to the European Parliament, or
  - (c) is regarded pursuant to Part XIII of the Second Schedule to the European Parliament Elections

Act 1997, as having been elected to the European Parliament to fill a vacancy.

#### **Disqualification of persons from becoming Regulator**

14. (1) A person who is, for the time being, entitled under the standing orders of either House of the Oireachtas to sit in either House or who is a member of the European Parliament shall, while he or she is so entitled or is such a member, be disqualified from becoming the Regulator.
- (2) A person who is—
- (a) a member of a local authority (within the meaning of the Local Government Act 2001) shall be disqualified from becoming the Regulator, or
  - (b) the Regulator shall cease to be the Regulator where he or she becomes a member of such a local authority.

#### **Prohibition on former Regulator from accepting office, etc., for 12 months**

15. (1) For a period of 12 months after a person has ceased to be the Regulator, such a person shall not accept any office, consultancy or employment where, in the course of such office, consultancy or employment, the person could or might use or disclose any confidential information acquired by him or her in the exercise of his or her functions of Regulator under this Act.
- (2) The time period provided for in *subsection (1)* does not apply for the purpose of precluding a person who has held the office of Regulator from—
- (a) holding office or engagement in any employment in the Civil Service or any statutory regulatory body, or
  - (b) acting as a consultant to any Minister of the Government.

#### **Prohibition on Regulator holding other office or employment**

16. The Regulator shall not hold any other office or employment in respect of which emoluments are payable during his or her term of office.

#### **Staff of Regulator**

17. (1) The Regulator may—
- (a) with the consent of the Minister, determine the number, grading, remuneration and other conditions of service of staff (including persons transferred or seconded from a public service body and persons employed on a contract of service) to be appointed to the Office of the Regulator, and
  - (b) appoint, following an open competition or transfer from other areas of the Public Service, to be members of the staff (including in a part-time capacity or for a specified period or purpose) of the Regulator such persons as the Regulator may determine from time to time.
- (2) Where a member of the staff of the Regulator has previous service in the civil service, such service shall be reckonable for the purposes of, but subject to any other exceptions or exclusions in—
- (a) the Redundancy Payments Acts 1967 to 2011,
  - (b) the Minimum Notice and Terms of Employment Acts 1973 to 2005,

- (c) the Unfair Dismissals Acts 1977 to 2007,
  - (d) the Terms of Employment (Information) Acts 1994 and 2012,
  - (e) the Organisation of Working Time Act 1997,
  - (f) the Parental Leave Act 1998,
  - (g) the Carer's Leave Act 2001,
  - (h) the Protection of Employees (Part-Time Work) Act 2001, and
  - (i) the Protection of Employees (Fixed-Term Work) Act 2003.
- (3) In this section “public service body” has the meaning assigned to it in section 5 of the Public Service Pensions (Single Scheme and Other Provisions) Act 2012.

#### **Membership of Houses of Oireachtas or European Parliament by staff**

- 18.** (1) Where a person who is a member of the staff of or employed by the Regulator is—
- (a) nominated as a member of Seanad Éireann,
  - (b) elected as a member of either House of the Oireachtas or to the European Parliament, or
  - (c) regarded pursuant to Part XIII of the Second Schedule to the European Parliament Elections Act 1997, as having been elected to the European Parliament to fill a vacancy,
- he or she shall upon that happening stand seconded from his or her employment by the Regulator and shall not be paid by, or be entitled to receive from, the Regulator remuneration or allowances in respect of the period commencing on such nomination or election, or when he or she is so regarded as having been elected, as the case may be, and ending when he or she ceases to be a member of either House or such Parliament.
- (2) A person who is, for the time being, entitled under the Standing Orders of either House of the Oireachtas to sit in either House or who is a member of the European Parliament shall, while he or she is so entitled or is such a member, be disqualified from becoming a member of the staff of the Regulator.
- (3) Without prejudice to the generality of *subsection (1)*, that subsection shall be read as prohibiting, among other things, the reckoning of a period mentioned in that subsection as service with the Regulator for the purposes of any superannuation benefits.

#### **Performance of certain functions by staff**

- 19.** The exercise of functions of the Regulator may be carried out by or through any member of the staff or officer of the Regulator authorised in that behalf by the Regulator.

#### **Consultants and advisers**

- 20.** (1) The Regulator may, from time to time, engage such consultants or advisers as he or she may consider necessary to assist him or her in the discharge of his or her functions under this Act.
- (2) Any fees due to a consultant or adviser engaged under this section shall form part of the expenses of the Regulator.

**Disclosure of interests**

21. (1) Where the Regulator, a member of the staff of the Regulator, or a consultant, adviser or other person engaged by the Regulator, has a pecuniary interest or other beneficial interest in, or material to, any matter which falls to be considered by the Regulator, he or she—
- (a) shall disclose to the Regulator or, where the disclosure is required of the Regulator, disclose to the Minister, the nature of his or her interest in advance of any consideration of the matter,
  - (b) shall neither influence nor seek to influence a decision in relation to the matter, and
  - (c) shall take no part in any consideration of the matter, unless there are compelling reasons requiring him or her to do so.
- (2) For the purposes of this section but without prejudice to the generality of *subsection (1)*, a person shall be regarded as having a beneficial interest if—
- (a) he or she or any nominee of his or her is a member of a company or any other body which has a beneficial interest in, or material to, a matter referred to in that subsection,
  - (b) he or she is in partnership with or is in the employment of a person who has a beneficial interest in, or material to, such a matter, or
  - (c) he or she is a party to any arrangement or agreement (whether or not enforceable) concerning land to which such a matter relates.
- (3) For the purposes of this section, a person shall not be regarded as having a beneficial interest in, or material to, any matter by reason only of an interest of his or her or of any company or of any other body or person mentioned in *subsection (2)* which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a person in considering, discussing or voting on, any question with respect to the matter, or in performing any function in relation to that matter.
- (4) Where a question arises as to whether or not a course of conduct, if pursued by a person, would be a failure by him or her to comply with the requirements of *subsection (1)*, the question shall be determined by the Regulator or, in the case of the Regulator, by the Minister.
- (5) Where a disclosure is made to the Regulator, particulars of the disclosure shall be recorded in the minutes of any meeting concerned.
- (6) Where a person, other than the Regulator, referred to in this section fails to make a disclosure in accordance with this section, the Regulator shall decide the appropriate action (including removal from office or termination of contract) to be taken.
- (7) Where the Regulator fails to make a disclosure in accordance with this section, the Minister shall decide the appropriate action (including removal from office) to be taken.

**Accounts and annual report of Regulator**

22. (1) The Regulator shall keep in such form as may be approved of by the Minister, all proper and usual accounts of all moneys received or expended by him or her and all such special accounts (if any) as the Minister may direct.
- (2) Accounts kept in pursuance of this paragraph in respect of each year shall be submitted by the Regulator in the following year on a date (not later than 4 months following the end of the financial year) to the Comptroller and Auditor General for audit and, as soon as may be after the audit, a copy of those accounts, or of such extracts from those accounts as the Minister may

specify, together with the report of the Comptroller and Auditor General on the accounts, shall be presented by the Regulator to the Minister who shall cause copies of the documents presented to him or her to be laid before each House of the Oireachtas.

- (3) The Regulator shall, when presenting the report referred to in *subsection (2)* to the Minister, present a report to the Minister in relation to the performance of his or her functions in the previous financial year and shall cause a copy of the report to be laid before each House of the Oireachtas.
- (4) The Regulator shall appear before the Oireachtas Committee having functions relating to the National Lottery when requested to do so by that Committee.

#### **Advance of funds by Minister to Regulator**

- 23.** (1) The Minister may, from time to time, advance to the Regulator out of moneys provided by the Oireachtas such sums as the Minister may determine for the purposes of expenditure by the Regulator in the performance of his or her functions.
- (2) The sums to be advanced under *subsection (1)* shall be expended solely for the purpose and exercise of the functions conferred on the Regulator by this Act.
  - (3) The Regulator shall pay to the Minister, on every sum advanced to the Regulator under this Act, interest from the date of the advance of such sum until the same is repaid at such rate and in such manner as shall be appointed by the Minister at the time of the advance and at such rate as may be determined from time to time, and such rate of interest shall not at any time exceed that fixed by an order under section 20 of the Courts Act 1981.

#### **Annual levy**

- 24.** (1) For the purpose of meeting expenses properly incurred by the Regulator in the discharge of his or her functions, a licence shall provide for the payment by the operator of an annual levy to the Regulator.
- (2) In this section “expenses” includes the salaries of the Regulator and members of the staff and other employees of the Regulator.

#### **Direction to Regulator regarding next licence**

- 25.** (1) Not later than 2 years before a licence is due to expire or at any time in the case of a revocation of a licence under *section 36* or in the circumstances mentioned in *subsection (3)*, the Minister may issue a direction to the Regulator in relation to the next licence to be granted by the Regulator following the expiry of the existing licence setting out—
- (a) the duration of the next licence and its terms and conditions (including matters necessary or expedient in the public interest),
  - (b) the financial arrangements regarding the award of the next licence, and
  - (c) the terms of the competition for the grant of the licence.
- (2) A licence issued by the Regulator following any such direction shall be in accordance with the direction.
  - (3) In this section, a reference to a licence includes, where the Minister, acting as the Regulator under *section 8*, has not granted a licence under *section 26* before the appointment of a person as the

Regulator under *section 7*, a reference to the licence granted under *section 3* of the National Lottery Act 1986.

## PART 4

### LICENCE TO HOLD NATIONAL LOTTERY

#### **Licence to hold National Lottery**

- 26.** (1) The Regulator shall hold a competition in respect of the grant of a licence to a person to hold the National Lottery in accordance with a direction under *section 25*.
- (2) The Regulator may draw up a draft of a licence to be issued as part of the competition referred to in *subsection (1)*. The draft shall be submitted to the Minister for his or her approval before being issued.
- (3) Following a competition in accordance with *subsection (1)*, the Regulator may grant a licence to a person authorising the holding on behalf of the Minister of the National Lottery.
- (4) Not more than one licence granted under this section shall be in force at any one time.
- (5) The Regulator shall not grant a licence to a person, unless the person is a company and the Regulator is satisfied as to the suitability and competence of the person to hold, or, as the case may be, procure the holding of the National Lottery.
- (6) The licence shall be in writing and shall be expressed to authorise the licence holder to hold or procure the holding of the National Lottery on behalf of the Minister.
- (7) The licence holder shall hold the National Lottery or shall procure the holding of the National Lottery through a company, being a subsidiary of the licence holder specified in the licence in accordance with *section 29(1)*.
- (8) The Regulator may, in accordance with a direction under *section 25*, attach to a licence, prior to it being granted, such terms and conditions as he or she considers necessary or expedient.
- (9) The licence shall contain a code of practice regarding the operation of the National Lottery to be complied with by the operator.
- (10) A code of practice for the purposes of *subsection (9)* may be adapted from a code of practice published by another person (whether within the State or otherwise).
- (11) The licence holder shall assist and co-operate with the holder of any subsequent licence in the establishment of the facilities necessary for the operation of the National Lottery.

#### **Amendment of licence**

- 27.** (1) Subject to this section, the Regulator may, at any time during the operation of a licence, after consulting with the licence holder, or on foot of an application in writing by the licence holder (which the Regulator may accept with or without amendments) by notice in writing given to the licence holder, amend or insert into it or delete from it such terms or conditions as the Regulator sees fit.
- (2) The Regulator may not amend a licence regarding—
- (a) the duration of its period of operation,

- (b) provisions governing the payment for good causes included in the licence,
  - (c) provisions governing the rate of commission payable to retailers included in the licence, or
  - (d) any list of prohibited games included in the licence.
- (3) The Regulator may amend the terms or conditions of a licence only with the written consent of the licence holder where the licence provides that the term in question may only be altered with the consent of the licence holder.
- (4) Where the Regulator is considering amending the licence he or she shall afford the licence holder an opportunity to make representations.
- (5) The licence holder may appeal an amendment to the licence, other than an amendment to which the operator has already given his or her consent under this section, to the High Court.

### Publication of licence

28. (1) Subject to *subsection (3)*, the Regulator shall publish details of a licence or a code of practice under it.
- (2) In the event of a licence being amended under *section 27*, details of the amendment shall be published by the Regulator subject to *subsection (3)*.
- (3) Any details of a licence, including amendments to it, deemed by the Regulator to be commercially sensitive shall not be published unless the Regulator considers that there is an overriding public interest compelling him or her to do so.
- (4) In the event of the Regulator deeming that details of a licence which are deemed by him or her to be commercially sensitive should be published in the public interest, he or she shall give the licence holder notice of his or her intention to do so and afford the licence holder an opportunity to make representations.
- (5) In this section “commercially sensitive information” means—
- (a) trade secrets of a person,
  - (b) financial, commercial, scientific or technical or other information whose disclosure could reasonably be expected to result in a material financial loss or gain to the person to whom the information relates, or could prejudice the competitive position of that person in the conduct of his or her profession or business or otherwise in his or her occupation, or
  - (c) information whose disclosure could prejudice the conduct or outcome of contractual or other negotiations of the person to whom the information relates.

## PART 5

### NATIONAL LOTTERY OPERATOR

#### The operator

29. (1) The licence holder shall—
- (a) be formed as a company, or
  - (b) if the holder is (at the time of the application for the licence) a company or a company formed

in another jurisdiction, form a company,

for the sole purpose of operating the National Lottery in accordance with the terms and conditions of the licence and is referred to in this Act as the “operator”.

- (2) The sole object of the operator shall be the holding of the National Lottery under the licence, and the doing of all such other things as are incidental or conducive to the attainment of that object.
- (3) Notwithstanding *subsection (2)* lottery infrastructure may be availed of in circumstances where it is of benefit to the community or is in the public interest but this may only be done by agreement between the Regulator and operator following a proposal by the Minister.
- (4) On or in contemplation of the expiry or revocation of the licence held by the licence holder, the Regulator may issue a direction in writing to the licence holder that with effect from such expiry or revocation, or such later date as the Regulator may specify, the company formed by the licence holder under this section to hold the National Lottery be wound up.
- (5) A licence shall provide for arrangements in respect of shareholders of the operator and other connected parties connected with the licence.

#### **Winding up of An Post National Lottery Company**

- 30.** (1) The Minister may make an order providing for the winding up of An Post National Lottery Company on a date specified in the order.
- (2) On the making of an order under *subsection (1)* by the Minister, the interest in any property, whether real or personal, held by An Post National Lottery Company in trust for the State, and the consideration for the acquisition of which consists, directly or indirectly, wholly or partly of any of the proceeds of the National Lottery, shall be transferred to the Minister.
  - (3) The Minister may, at his or her discretion permit the operator to use the property referred to in *subsection (2)* for the purpose of operating the National Lottery and to hold any such property in trust for the State.
  - (4) Final accounts of An Post National Lottery Company shall be drawn up by the Regulator as soon as may be after its winding up in such form as approved by the Minister in respect of the period specified by the Minister.

#### **Memorandum and articles of association**

- 31.** (1) The memorandum and articles of association of the operator, shall be in such form and of such content consistent with this Act as shall be approved of by the Regulator.
- (2) Notwithstanding anything contained in the Companies Acts, no alteration in the memorandum and articles of association of the operator shall be valid or effectual unless made with the prior approval of the Regulator in writing.

## PART 6

## ENFORCEMENT

**Investigation into affairs of operator**

32. (1) The Regulator where he or she is of the opinion that there are circumstances suggesting it is appropriate to investigate and report on any apparent breach of this Act or the terms or conditions of the licence held by the operator may appoint a person (“investigator”) to investigate the apparent breach.
- (2) The operator and his or her employees shall co-operate with any investigation under *subsection (1)* and supply the investigator with such information as the investigator considers necessary for the purposes of the investigation.
- (3) For the purposes of an investigation an investigator may enter the premises of the operator and may remain on the premises and have access to, inspect and take copies of any records kept by the operator (whether in legible form or otherwise) he or she finds or are produced to him or her.
- (4) Where the investigator forms the opinion that there has been a breach of this Act or the terms or conditions of the licence or that the operator has failed to comply with the investigation, he or she shall inform the operator and the Regulator. The operator may, within 10 days, of being notified of the investigator’s opinion, make representations to the Regulator.
- (5) A person who fails, without reasonable excuse, to co-operate with an investigation under this section, to supply information requested by the investigator or obstructs the investigator in the course of an investigation commits an offence and is liable on summary conviction to a class A fine.

**Powers of Regulator to issue direction or apply for an injunction**

33. (1) Where the Regulator considers, having considered any representations under *section 32*, that the operator has breached this Act or a term or condition of the licence or has failed to co-operate with an investigation, he or she may, without prejudice to any other action under this Act—
- (a) give a direction to the operator in writing specifying the breach or failure and requiring the operator to carry out or to cease carrying out a specified action or actions in order for the operator to comply with this Act or the terms or conditions of the licence or the investigation and the operator shall immediately comply with the direction, or
- (b) apply to the High Court for an order restraining the operator from breaching this Act or a term or condition of the licence or to co-operate with an investigation, as the case may be.
- (2) Where the operator fails to comply with a direction under *subsection (1)(a)*, the Regulator may apply to the High Court for an order to compel the operator to comply with the direction or to restrain the operator from breaching this Act or a term or condition of the licence.
- (3) The Regulator may publish details of any breach of this Act or breach of a term or condition of the licence by the operator and of any direction which he or she has given under this section or application he or she has made to the Courts.

**Notification to operator regarding financial sanction**

34. (1) Where the Regulator considers that the operator has failed to comply with a direction under

*section 33*, the Regulator shall notify the operator that he or she intends to apply to the High Court for a determination that there has been a breach of this Act or a term or condition of the licence or has failed to comply with an investigation, and that the court impose a financial sanction, unless the operator requests, within such period as the Regulator allows, not being less than 14 days, that the Regulator deal with the matter and indicate the amount of the financial sanction (not exceeding €250,000) that it proposes, if the matter is dealt with by the Regulator.

- (2) A notification under *subsection (1)* may indicate the amount of the financial sanction (not exceeding €500,000) that it intends to recommend to the Court, if the matter is dealt with by the Court under *section 35*.
- (3) Where the operator fails to make a request under *subsection (1)* within the period referred to in that subsection or informs the Regulator that no such request will be made, the Regulator shall apply to the High Court for a determination that there has been a breach of this Act or a term or condition of the licence or a failure to co-operate with an investigation by the operator.
- (4) Where the operator makes a request under *subsection (1)*, the Regulator shall afford the operator an opportunity to make submissions at a hearing before the Regulator in respect of the matter.
- (5) The Regulator shall make rules providing for the conduct of a hearing under *subsection (4)*. The rules may include provision for an oral or other form of hearing, as appropriate, and for the taking of evidence whether orally or otherwise, as appropriate, and the applicable rules of evidence.
- (6) The Regulator may not award costs or expenses to any party in relation to a hearing under *subsection (4)*.

### **Financial sanctions**

**35.** (1) The High Court, in any application made to it under *section 34*—

(a) may—

- (i) make a determination that there has been a breach of this Act or a term or condition of the licence or a failure to co-operate with an investigation by the operator,
- (ii) if it thinks fit direct, having regard to any amount the Regulator recommends and taking into consideration any relevant matters that the operator shall pay to the Regulator a financial sanction not exceeding €500,000, in respect of the breach or failure to co-operate with the investigation in question, and
- (iii) make such order it considers appropriate,

or

(b) may dismiss the application,

and the Court may make such order as to costs as it thinks fit in respect of the application.

- (2) Where a request in writing has been made to the Regulator by the operator under *section 34*, the Regulator may make a determination that there has or has not been a breach of this Act or term or condition of the licence or a failure to co-operate with an investigation by the operator and issue a statement of findings to the operator.
- (3) Where the Regulator determines under *subsection (2)* that there has been a breach of this Act or a term or condition of the licence or a failure to co-operate with an investigation by the operator, the Regulator may direct, taking into consideration and having regard to any matters it considers

relevant that the operator shall pay the Regulator a financial sanction not exceeding the amount as proposed in a notification given to the operator in accordance with *section 34*, in respect of the breach or the failure to co-operate with an investigation.

- (4) The Regulator may publish on a website maintained or used by the Regulator such details as he or she considers proper concerning a decision of the Court under *subsection (1)* or such a statement of findings made by it under *subsection (2)*.
- (5) The operator may appeal to the High Court against either or both a statement of findings issued in respect of the operator under *subsection (2)* and a financial sanction imposed against the operator under *subsection (3)*.
- (6) A sum due under this section may be recovered in any court of competent jurisdiction as a simple contract debt.
- (7) All payments made to the Regulator under this section shall be paid into or disposed of for the benefit of the Exchequer in such manner as the Minister for Public Expenditure and Reform may direct.

### Revocation of licence

- 36.** (1) The Regulator may by notice in writing to the licence holder inform the holder of his or her intention to revoke the licence giving reasons for the proposed revocation if—
- (a) an action or actions of the licence holder is deemed by the Regulator to materially damage the National Lottery or the State or the reputation of the National Lottery or that of the State,
  - (b) in the opinion of the Regulator, a term or condition of the licence or a provision of this Act has been contravened,
  - (c) the licence holder has failed to comply with a direction by the Regulator under *section 33*,
  - (d) any information given by the licence holder in or in connection with the application for the licence or in pursuance of a term of the licence was false in a material particular,
  - (e) the licence holder is not taking, or proposing to take, steps that are necessary or desirable for preventing the commission of fraud with respect to the National Lottery, or
  - (f) any person who is managing the business or any part of the business of running the National Lottery under the licence is not a suitable person to do so having regard to any guidelines under *subsection (6)*;
- and afford the licence holder a reasonable period, being a period of not less than 21 days, to make representations to the Regulator.
- (2) Having given the licence holder such period as is reasonable to make representations on the proposed revocation following a notice under *subsection (1)*, the Regulator may decide to revoke the licence.
  - (3) In the event of the Regulator deciding to revoke the licence, the licence holder may appeal the decision to the High Court within 21 days of the decision or such further period as the Regulator allows.
  - (4) Where the Regulator decides to revoke the licence—
    - (a) the decision takes effect, where no appeal is made within the period referred to in *subsection (3)*, upon the expiration of that period, and

- (b) in the event of an appeal against the decision made within that period, the decision stands suspended until the appeal is determined or withdrawn.
- (5) In circumstances where the Regulator deems that there is an immediate and grave risk to the solvency of the National Lottery, the Regulator may apply to the High Court for an order permitting the immediate revocation or suspension by the Regulator of the National Lottery licence held by the operator.
- (6) The Minister may issue guidelines to the Regulator in relation to the suitability of a person to manage the business or a part of the business of running the National Lottery.

#### **Prohibition on transfer or alienation of licence**

37. (1) A licence holder shall not transfer the licence or alienate his or her rights or obligations under the licence, or transfer or alienate any interest in it to a third party without the prior written consent of the Regulator.
- (2) A licence holder may not use the licence as a form of security without the prior written consent of the Regulator and no other party shall have any claim on the licence.
- (3) Any instrument executed in contravention of this section shall be void and have no effect.

#### **Independent scrutiny of National Lottery held by operator**

38. (1) The Regulator may from time to time appoint one or more persons whose functions shall be to examine the conduct generally of the operator and to report thereon to the Regulator, and for those purposes, but without prejudice to the generality of the foregoing, to investigate the following:
- (a) its organisation, management and procedures;
- (b) the system for selecting winning tickets and the methods employed to prevent fraud in, or the manipulation of, that system and to ensure its fairness, accuracy, efficiency and reliability;
- (c) the manner of the selection, organisation and supervision of staff of the operator engaged in—
- (i) the handling or processing of National Lottery tickets or numbers for National Lottery tickets and the selection of National Lottery tickets to be winning tickets, and
- (ii) the installation, operation, maintenance, repair or supervision of computers or other electronic devices, or devices of any kind, used for the purposes of the National Lottery;
- (d) the installation, operation, maintenance, repair and supervision of computers or other electronic devices, or devices of any kind, used for the purposes of the National Lottery;
- (e) the quality and suitability of telecommunications facilities used for the purposes of the National Lottery employed by the operator;
- (f) the operation of this Act in relation to the National Lottery and whether the provisions of this Act are being complied with in relation to it.
- (2) A person appointed under this section shall report to the Regulator—
- (a) at such intervals as he or she considers necessary in relation to the matters specified in *subsection (1)*, and
- (b) from time to time in relation to any other matters as respects the National Lottery which he or she considers should be so reported or which are specified by the Regulator.

- (3) For the purposes of his or her functions under this Act, a person appointed under this section may enter and remain on the premises of the operator at all reasonable times and shall have access to and may inspect any National Lottery tickets or any records kept by the operator (whether in legible form or otherwise) relating to the National Lottery and may take copies of or of extracts from the records.
- (4) Every director and every employee of the operator who is concerned in the National Lottery, shall give to the Regulator or to a person appointed by him or her under this section such information in his or her possession relating to the National Lottery as may be requested by the Regulator or by the person appointed.
- (5) A person appointed under this section may, if he or she so thinks fit, make recommendations to the Regulator in relation to the National Lottery or its conduct.
- (6) A person who—
  - (a) fails or refuses to comply with a request duly made under *subsection (4)* in relation to information in his or her possession, or
  - (b) obstructs or hinders a person appointed under *subsection (1)* in the performance of his or her functions under this section,commits an offence and is liable on summary conviction to a class A fine.

#### **Special powers of Regulator in relation to operator**

- 39.** (1) Following the revocation of a licence, the Regulator may, if he or she thinks fit, appoint a person (“manager”) to take over the management of the operator and to carry on the operator as a going concern.
- (2) A manager shall have in relation to the operator all such powers as may be necessary or expedient for or incidental to his or her functions in relation to the operator, including the sole authority over and direction of all officers and employees of the operator.
  - (3) The functions of a manager may be performed by him or her with the assistance of persons appointed or employed by him or her for that purpose.
  - (4) All functions which are vested in the directors or in any committee of management of the operator (whether by virtue of the memorandum or articles of association of the operator or by law or otherwise) shall be performable only by the manager and all such powers of the operator as are exercisable by or with the sanction of a general meeting of the members of the operator shall be exercisable only by the manager.
  - (5) A manager shall hold office upon such terms and conditions (including terms and conditions relating to remuneration) and for such term as may be determined by the Regulator from time to time and his or her appointment may be terminated by the Regulator in writing at any time.
  - (6) A manager shall have all the powers that he or she would have, and there shall apply in relation to him or her all the statutory provisions that would so apply, if he or she were a liquidator appointed by the High Court in respect of the operator and those powers shall be exercisable by him or her without the control or sanction of the High Court specified in the Companies Acts, in relation to such a liquidator.
  - (7) The Companies Acts and any instruments made thereunder and, in particular, the provisions of those Acts and instruments relating to the liquidation of companies shall apply and have effect in

relation to the powers aforesaid with any modifications specified in an order under *subsection (8)* and any other necessary modifications.

- (8) Without prejudice to the generality of *subsection (7)* the Minister may, for the purpose of giving full effect to the application by that subparagraph of the Companies Acts, and any instruments thereunder, on the recommendation of the Regulator by order modify the provisions of those Acts or any instruments made thereunder or any rules of court relating thereto in their application under and for the purposes of this section if he or she considers it necessary or appropriate to do so to facilitate the performance of the functions of a manager.

## PART 7

### OPERATION OF NATIONAL LOTTERY AND USE OF FUNDS

#### Prizes in National Lottery

40. (1) The number, form (whether sums of money or otherwise) and value of the prizes to be distributed in the National Lottery shall, subject to *subsection (2)*, be determined by the operator.
- (2) The total value of the prizes distributed in the National Lottery in any financial year of the operator shall be equal to or not less than 50 per cent of the total moneys received by the operator in that year in respect of the sale of National Lottery tickets in that year or such other greater percentage as may be specified in the licence.

#### Disbursement of funds

41. (1) Moneys paid into the Central Fund pursuant to *section 44* shall be applied for the purposes of such one or more of the following, and in such amounts, as the Government may determine from time to time:
- (a) sport and recreation;
  - (b) national culture and heritage (including the Irish language);
  - (c) the arts (within the meaning of the Arts Act 2003);
  - (d) health of the community;
  - (e) youth, welfare and amenities;
  - (f) natural environment;
  - (g) such other objectives (if any) as the Government may determine from time to time.
- (2) Whenever a purpose is determined under *paragraph (g)* of *subsection (1)*, the Minister shall cause notice of the purpose to be published in *Iris Oifigiúil*.
- (3) Amounts required for a purpose determined under this section shall be paid out of moneys provided by the Oireachtas.

#### Sale of National Lottery tickets

42. (1) (a) A licence may provide for authorisation by the operator of persons to sell National Lottery tickets and the remuneration of such persons.

- (b) The minimum number of persons who may be authorised under this subsection to sell National Lottery tickets shall be set out in a licence.
- (2) An authorisation for the purposes of this section shall be in writing and shall be subject to such terms and conditions (including terms and conditions relating to the remuneration of persons by the operator in respect of the sale by them of National Lottery tickets and the time, form and method of such remuneration) as may be determined by the operator with the consent of the Regulator and specified in the authorisation.
  - (3) The Regulator, where a licence does not provide for the authorisation referred to in *subsection (1)* or such authorisation is withdrawn, may authorise such persons as he or she may determine to sell National Lottery tickets.
  - (4) A person (other than the operator) shall not sell, offer or expose for sale or invite an offer to buy or have in his or her possession for sale a National Lottery ticket unless he or she is the holder of an authorisation under this section entitling him or her to do so.
  - (5) The operator may sell National Lottery tickets through interactive channels.
  - (6) A person, including the operator, shall not sell or offer for sale by any means a National Lottery ticket to a person under the age of 18 years or invite from such a person an offer to buy a National Lottery ticket.
  - (7) The form and price of a National Lottery ticket shall be determined by the operator.
  - (8) The operator, subject to any terms or conditions of the licence with regard to promotional activities or offers, shall not give, distribute or sell to any person (other than holders of authorisations under this section) National Lottery tickets—
    - (a) free of charge unless as prizes in a National Lottery game, or
    - (b) at a price less than that at which they are sold to members of the public generally.
  - (9) A person who contravenes *subsection (4), (6) or (8)* commits an offence and is liable on summary conviction to a class A fine.
  - (10) In a prosecution for an offence under *subsection (9)* for a contravention of *subsection (6)* it is a defence for the accused to show that he or she took all reasonable steps to verify the age of the person purchasing the ticket.
  - (11) The defence provided for in *subsection (10)* shall apply to a person, including An Post National Lottery Company, who sells a ticket (including by way of interactive channels) while the licence granted to that company under the National Lottery Act 1986 is in force.

#### **Prohibition on certain persons from owning lottery ticket**

- 43.** (1) None of the following persons shall be entitled to own a National Lottery ticket that has been purchased for value or awarded as a prize in the National Lottery or any part of such a ticket:
- (a) the operator or a director, or agent of the operator (but not including a retail sales agent), or employee of the operator;
  - (b) a person who manufactures National Lottery tickets or any employee of the person or, if that person is a company, a director of the company;
  - (c) a person who operates, controls or programmes the central gaming system of the National Lottery or any employee of the person or, if that person is a company, a director of the

company.

- (2) If a person specified in *subsection (1)* becomes the owner of the whole or part of a National Lottery ticket—
  - (a) he or she commits an offence and is liable on summary conviction, to a class A fine, on conviction on indictment, to a fine not exceeding €200,000,
  - (b) the National Lottery ticket shall not be entered in the National Lottery and, if it is so entered, the owner or owners thereof shall not be entitled to be awarded any prize in the National Lottery in respect of the ticket, and
  - (c) if a prize is awarded in the National Lottery to the owner or owners of the ticket, the prize shall be returned, not later than one month after its receipt, to the operator and, if it is not so returned, it or an amount equal to its value may be recovered by the operator from the owner or, jointly and severally, from the owners of the ticket as a simple contract debt in any court of competent jurisdiction.
- (3) It is a defence for a person charged with an offence under this section to show that the National Lottery ticket concerned was purchased for him or her without his or her knowledge or consent by another person and (in the case of a person other than the operator) that, as soon as reasonably possible after becoming aware of the purchase, he or she informed the operator of the purchase and of the fact that he or she was not entitled to be the owner of the ticket.

#### **National Lottery Fund**

44. (1) The National Lottery Fund (“the Fund”) established under section 8 of the National Lottery Act 1986 continues in being and shall comprise a single account.
- (2) The Fund shall be managed and controlled by the Regulator.
- (3)
  - (a) The proceeds of the sale of National Lottery tickets, after deduction therefrom of any remuneration paid to sellers of National Lottery tickets and such amounts, if any, in respect of prizes in the National Lottery as the Regulator may authorise, shall be paid into the Fund.
  - (b) Payments of amounts in respect of prizes for winning tickets (other than amounts referred to in *paragraph (a)*) shall be made out of the Fund.
  - (c) Payments allocated for the purposes set out in *section 41* shall be made by the Regulator from the Fund to the Central Fund at intervals to be determined by the Minister, subject to any provision in the licence.
  - (d) Payments allocated for the purposes of *section 24* shall be retained by the Regulator in accordance with the terms of the licence.
  - (e) The allocation of moneys remaining in the Fund after payments provided for under *paragraphs (b), (c) and (d)* have been made shall be set out in the licence.
- (4) The accounts of the Fund shall be submitted annually to the Comptroller and Auditor General for audit and the Regulator shall cause a copy of an abstract of the accounts so audited together with a copy of the report of the Comptroller and Auditor General thereon to be laid before each House of the Oireachtas.

**Schemes for lottery games in National Lottery**

45. (1) (a) The operator shall prior to its launch, in relation to each lottery game or category of game comprised in the National Lottery, prepare and submit to the Regulator a scheme setting out the rules of the game or category of game.
- (b) The operator may at any time prepare and submit to the Regulator a scheme amending a scheme under this subsection, including a scheme under this paragraph.
- (c) The Regulator may approve of a scheme submitted to him or her under this section.
- (d) A lottery game comprised in the National Lottery shall be held by the operator in accordance with the rules contained in a scheme under this subsection approved of by the Regulator, in force in relation to that game or category of game.
- (e) The Regulator shall determine what constitutes a game category for the purpose of this section.
- (2) Rules of a lottery game may, without prejudice to the generality of *subsection (1)*, make provision with respect to the following matters:
- (a) the giving of prizes in the National Lottery in cases in which the holders of the winning tickets are persons under the age of 18 years;
- (b) the giving of prizes in the National Lottery in cases in which the holders of the winning tickets are persons under any legal disability or of mental incapacity;
- (c) the receipts which are to be a good discharge for prizes given to persons in the National Lottery;
- (d) the settlement of disputes.
- (3) The Regulator may direct the operator to maintain a register on the operator's website for public viewing of all lottery games currently on offer and the operator shall forthwith comply with such a direction.
- (4) In considering schemes for lottery games, the Regulator shall have regard to the protection of players, the reputation of the National Lottery and compliance with accepted standards governing advertising within the State.

**Provisions relating to names "National Lottery" and "Irish National Lottery"**

46. (1) A person, other than the Minister, the Regulator, the operator or a licensee or a person authorised to do so by any of them, shall not, for the purposes of a lottery game other than the National Lottery, make use of the names "Irish National Lottery" or "National Lottery" or of their equivalents in the Irish language or of any name so closely resembling either of those names or either of their equivalents in the Irish language as to be reasonably capable of leading to the belief that either of those names or either of those equivalents is being referred to.
- (2) The goodwill attaching to the names "Irish National Lottery" and "National Lottery" and their equivalents in the Irish language and to the name of any lottery game held by the Regulator or under a licence vests in the Minister.
- (3) A person who contravenes *subsection (1)* commits an offence and is liable—
- (a) on summary conviction, to a class A fine, or

- (b) on conviction on indictment, to a fine not exceeding €50,000.

## PART 8

### FURNISHING OF REPORTS AND INFORMATION BY OPERATOR

#### **Furnishing by operator of annual report and information to Regulator**

47. (1) The operator shall, in accordance with standard accounting rules and guidelines keep all proper and usual accounts of all moneys received or expended by it, including a profit and loss account and a balance sheet and, in particular, shall keep all such special accounts as the Regulator may from time to time direct.
- (2) Accounts kept in pursuance of this section shall be submitted annually by the operator to an auditor for audit and a copy of the profit and loss account and of the balance sheet and of such other (if any) of its accounts as the Regulator may direct and a copy of the auditor's report on the accounts shall be presented to the Regulator, not later than 4 months after the end of the financial year of the operator to which they relate, and the Regulator shall cause copies of each of the documents aforesaid and of the directors' report to the shareholders of the operator for the financial year concerned of the operator to be laid before each House of the Oireachtas.
- (3) As soon as may be after the end of each financial year of the operator, but not later than 4 months thereafter, the operator shall make a report to the Regulator of its activities during that year and the Regulator shall cause copies of the report to be laid before each House of the Oireachtas.
- (4) The operator shall, if so required by the Regulator, furnish to the Regulator such information as he or she may request from time to time in respect of any account prepared by it or any report specified in *subsection (2)* or in relation to its policy and operations other than day to day activities.
- (5) Representatives of the operator shall appear before the Oireachtas Committee having functions relating to the National Lottery when requested to so do by that Committee.

#### **Furnishing of information by the operator to the Regulator**

48. The licence holder and the operator shall provide the Regulator with such information as the Regulator may require at times specified by the Regulator.

#### **Sharing of Information with Revenue Commissioners and Department of Social Protection**

49. (1) The operator shall disclose specific information in relation to prizewinners to the Office of the Revenue Commissioners for the purposes of the administration of the Taxes Consolidation Act 1997 by that Office.
- (2) Such disclosure shall be in response to a specific request in writing from the Office of the Revenue Commissioners seeking information in relation to a named person for the purpose of ascertaining compliance by that person with the requirements of the Taxes Consolidation Act 1997.
- (3) The operator shall disclose specific information in relation to prizewinners to the Department of Social Protection for the purpose of the control of schemes administered by or on behalf of the Minister for Social Protection. Such disclosure shall be in response to a specific request in writing from or on behalf of the Minister for Social Protection seeking information in relation to a named

person for the purpose of ascertaining that person's eligibility under a particular Social Welfare Scheme or Schemes.

- (4) Where information shared between the operator and the Office of the Revenue Commissioners or the Department of Social Protection is found to be inaccurate, the organisation concerned on making the discovery shall advise the other organisation of the amended information.

## PART 9

### LOTTERIES - GAMING AND LOTTERIES ACTS 1956 TO 2013

#### **Exemption of National Lottery from Gaming and Lotteries Acts 1956 to 2013**

**50.** The Gaming and Lotteries Acts 1956 to 2013 do not apply to the National Lottery.

#### **Amendment of section 27 and 28 of Gaming and Lotteries Act 1956, etc.**

**51.** (1) The Gaming and Lotteries Act 1956 is amended—

- (a) after section 22, by inserting the following:

“22A. Section 22 does not apply to a lottery held under section 27 or 28.”,

- (b) in section 27(2), by substituting for paragraph (b) the following:

“(b) the total value of the prizes shall not be more than €5,000 or such other amount that, for the time being, stands specified in lieu of that amount in regulations made by the Minister;”.

- (c) in section 27, by substituting for the second sentence of subsection (4) the following:

“If more than one lottery is held in any week, the total value of the prizes for the week shall not be more than €5,000 or such other amount that, for the time being, stands specified in lieu of that amount in regulations made by the Minister.”,

- (d) in section 28(2), by substituting for paragraph (c) the following:

“(c) the total value of the prizes—

- (i) on any occasion shall not be more than €30,000 or such other amount that, for the time being, stands specified in lieu of that amount, and

- (ii) if more than one lottery is held in any week, the total value of the prizes for the week shall not be more than €30,000 or such other amount that, for the time being, stands specified in lieu of that amount,

in regulations made by the Minister;”.

and

- (e) after section 28, by inserting the following:

#### **“Matters to take into consideration when making regulations under section 27 or 28**

28A. Before the Minister makes any regulations under section 27 or 28, he or she shall, in so far as it is possible to do so, consider and take account of the consequences of any proposed alteration of the amount in the total value of prizes on—

- (a) lotteries which are conducted under this Act,
  - (b) any other lottery conducted in accordance with law, and
  - (c) charitable or philanthropic giving in society generally.”.
- (2) Every regulation made by the Minister for Justice and Equality under section 27 and 28(2)(c) (as amended by this section) of the Gaming and Lotteries Act 1956 shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either such House within the next 21 days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to anything previously done thereunder.