

UK LICENSING: KEY REQUIREMENTS

Many offshore operators obtaining continuation licences on 1 November will need to comply with a number of key reporting requirements and conditions. **Bahar Alaeddini** of Harris Hagan provides a summary of what they will need to provide under the UK regime.

There is a plethora of regulations UK operators need to comply with, including offshore operators with continuation licences granted on 1 November 2014, under the new point-of-consumption licensing regime. Any non-compliance puts a licence at risk, and the Gambling Commission (UKGC) has statutory powers to take action, including issuing a warning, attaching an additional condition, removing or amending a condition, suspending a licence at the outset, or following a review, revoking a licence or imposing a financial penalty. For less serious cases of non-compliance, the UKGC generally provides operators the chance to rectify before resorting to these actions. The purpose of this article is to provide a snapshot of the key reporting requirements of being licensed in the UK, as set out in the Gambling Act 2005 and Licence Conditions and Codes of Practice (LCCP).

Applications to vary

To do any of the following an operator will need to submit an application to vary to the UKGC:

- change operating name
- add, remove or amend a trading name
- change head office address
- add, amend or remove a licensable activity
- change the fee category of a licence activity
- add, remove or amend a licence condition
- add or remove Annex A key person (SSO exemption only)
- change the name of an approved Annex A key person (SSO exemption only)
- add, remove or relocate key equipment, including that of a third party supplier

This application usually takes 28 days to be granted and operators must wait until the application has been granted until making the relevant changes. Fees vary widely according to the type of variation, for example, adding a licensed activity costs 25% of the standard licence fee, increasing a fee category costs 20% of the standard licence fee and changing details on the licence, such as adding a trading name, costs £25.

It is worth remembering that under the Licensing (Gambling and Advertising) Act 2014, limitations are placed on continuation licences. Operators holding continuation licences cannot add, amend or remove a licensable activity, nor can they add, amend or remove a condition attached to a continuation licence (for example, to increase a fee category); however, key equipment can be added, removed and relocated.

Notification of change

To do any of the following an operator will need to submit a notification of change application to the UKGC:

- change contact details
- change registered address
- add, amend or remove premises
- add or remove key persons (PMLs)
- add any shareholder holding between 3% and 999% equity
- remove any shareholder whose shareholding has dropped below 3%
 - change the name of an Annex A (shareholder or a person exercising significant influence over the operator)
- conviction against the operator or a key person

- add or remove an equipment or service provider
- add or remove a third party white label

As this is a notification requirement and not an application, the UKGC does not provide “approval”, therefore, operators can implement changes immediately.

Change of corporate control

A change of corporate control takes place when a person or other legal entity in the ownership structure becomes a holder of 10% or more of the shares and/or voting power, or is able to exercise significant influence of the operator for any other reason. Section 102 of the Act requires operators to submit an application to the UKGC when there is a new controller of a company within five weeks of the change occurring, for example, closing of the transaction, for the licence to continue to have effect. If required, pre-approval of the transaction may also be sought under section 103 of the Act, for example, if a purchaser wants to know if they will be approved by the UKGC.

The UKGC will seek to revoke a licence if the application has not been made within five weeks. The application fee is either £100, 25% of the standard licence application fee or 75% of the standard licence application fee, depending on the type of change of control and whether the incoming controller is already known to the UKGC. If the change affects two or more licences within the group further discounts may apply.

The following are examples that trigger a change of corporate control:

- adding any new shareholder with 10% or more, whether directly or indirectly
- an existing shareholder increasing shareholding to 10% or more

- removing a holding company where the ultimate controller does not change
- removing a holding company where the ultimate controller changes

A change of corporate control does not occur where a person/entity already owns 10% or more and increases their shareholding; however, we would recommend that operators still notify the UKGC.

Key events

A key event, as defined in 15.2 of the LCCP, is an event that could have a significant impact on the nature of structure of an operator's business, which is very broadly defined and includes:

- a petition being presented for the winding-up of any group company
- any group company being placed in administration or receivership
- any person/entity who becomes a shareholder holding 3% or more of the operator, whether directly or indirectly
- any investment in an operator which is not by way of subscription for shares
- any breach of a covenant given to a bank or other lender
- the appointment/removal any key person (non-SSO)
- any change to the structure that affects a key position
- any material change in banking arrangements
- any change relating to how customer funds are protected
- any deficit on reconciliation of any separated designated customer accounts
- the grant, withdrawal or refusal or any application made by the operator or group company to a gambling regulator in another jurisdiction
- any investigation by a professional, statutory, regulatory or government body, in any jurisdiction, into the operator's activities
- the receipt of any report from a professional, statutory, regulatory or government body,

in any jurisdiction, of the outcome of a compliance assessment in relation to the operator or group's gambling activity

- any court judgment, in any jurisdiction, against the operator or group company
- any qualification to an auditor's report, where the operator is required to produce audited accounts
- the imposition of a disciplinary sanction, by the operator, for gross misconduct against someone in a key position
- the resignation of someone in a key position following disciplinary proceedings in relation to gross misconduct

All key events must be reported as soon as reasonably practicable and in any event within five working days or the operator becoming aware of the event's occurrence. They can be reported via email or the eServices system, which operators can register for with their full licence number.

It is also worth noting that there is also a wider licence condition/information requirement in the LCCP to keep the UKGC informed of any matter that will have a material impact on the operator's business, or its ability to conduct licensed activities compliantly and consistently with the licensing objectives.

Regulatory returns

Regulatory returns are a key component of the UK regulatory framework and it is a requirement of licence condition 15.3.1 of LCCP for all operators to submit regulatory returns. The information provided is used by the UKGC to understand developments within the industry, monitor compliance and publish industry statistics.

All remote casino, betting and bingo activities are reported using a single quarterly return and remote gambling software is an annual return.

Earlier this year revisions were published to the regulatory return forms and process. The revised regulatory returns came into

effect on 1 October 2014 and all regulatory returns can now only be submitted via the eServices system. A regulatory return requires operators to set out information on workforce, operations, finances, products, jurisdictions, trading names and customer demographics.

Customer funds reporting

In the recent LCCP changes, the UKGC confirmed it would introduce customer funds reporting so that operators were regularly reporting on the levels of customer liabilities and funds held in their customer account(s). The latest indication is that this will be introduced during 2015, and at the earliest from 1 January 2015; however, this has not been confirmed and the UKGC is considering whether it would be more appropriate to align the timetable to the start of the financial year.

The UKGC has confirmed that report will be based on weekly reconciliation and will require operators to set out the amount of customer funds held in each of the relevant bank or investment accounts, the location of those funds, the total funds held and the total customer liabilities at that time, the type of reconciliation, distinguish between funds relating to the UKGC licence and other customers funds, and be verified by a PML holder.

Conclusion

There is no hiding the fact that holding a UK licence comes with strings attached. Operators should familiarise themselves with the LCCP and the various reporting mechanisms in place. The UKGC will expect all operators, without exception, to be open and transparent with them.

Bahar Alaeddini is a solicitor at Harris Hagan and specialises in regulatory law, advising major B2C and B2B operators, as well as start-up operators.

