

# REGULATORY ACTION: WHAT DO OPERATORS NEED TO KNOW?

As demonstrated by a recent high-profile case, the Gambling Commission has the important regulatory power to call in operator and personal licences for review at any time. **Bahar Alaeddini** of Harris Hagan looks at the review process for iGaming Business.

**No operator wants** to be subject to a regulatory review. It is hugely stressful and expensive and, by its very nature, revocation of the licence is at least a possibility. As gambling lawyers, we work with clients to focus on compliance to mitigate the chances of regulatory action. In the rare circumstances a breach does occur, focus then shifts to achieving the best possible outcome.

The Gambling Commission (“Commission”) has the important regulatory power to call in operator and personal licences for review. Section 110 of the Gambling Act 2005 (the “Act”) provides that licences are granted for an indefinite period. However, the Commission has the power to introduce time limits for licences if it believes there is a regulatory need to do so. Therefore, the general position is that licences should not need to be renewed at any point.

## What is a review?

Section 116 of the Act gives the Commission the power to review, over time, the performance of licensees and the operation of licence conditions. Section 116(2) gives the Commission the power to review any matter relating to an individual licensee on any of three grounds, if the Commission:

1. suspects that conditions of a licence are being breached
2. believes the licence holder or any person connected with the gambling activities has been convicted of a relevant offence in Great Britain or abroad
3. for any reason:
  - suspects that the licence holder may be unsuitable to perform the licensed activities; or

- thinks that a review would be appropriate.

Therefore, a licence review could be carried out even if there is no suspicion or belief about a licensee’s activities, and merely if the licence has been held for a long time and the Commission considers a review prudent. The potential reality in our experience, however, is that reviews tend to be triggered by specific incidents and/or in the light of regulatory concerns on the part of the Commission, typically of a serious nature and often related to investigations by the police or other regulatory bodies.

## What regulatory powers does the Commission have?

The Commission has a range of powers which it may exercise *following* a review, including:

- issuing a warning to a licence holder
- attaching an additional condition to a licence
- removing or amending a condition to a licence
- suspending a licence at the outset, or following a review
- revoking a licence
- imposing a financial penalty following breach of a licence condition.

Additionally, the Commission has regulatory powers it can exercise without carrying out a licence review, including:

- imposing a financial penalty
- voiding a bet
- deciding that a licence has lapsed if a licensee becomes incapable of carrying on the licensed activities by reason of mental or physical incapacity
- revoking a licence for non-payment of an annual fee

The Act does not set a limit for a

financial penalty; it will be set at a level the Commission considers to be proportionate to the breach and it will consider the financial situation of the licensee.

## Commission policy documents

There are a number of policy documents, which are essential reading to understand the Commission’s approach to licensing, compliance and enforcement.

*The Statement of Principles for Licensing and Regulation* underpins the Commission’s regulatory work and sets out its approach to compliance including its statutory functions, what it expects from applicants and from licensees, applicable principles and promotion of the licensing objectives. This document was recently revised to take into account the Commission’s experience in recent years, including internal structure changes to improve the Commission’s operation (for example, where it has found better ways to deal with certain issues it has encountered), emphasising the early resolution of issues and feedback from the industry.

*The Licensing, Compliance and Enforcement Policy Statement* sets out in broad terms how the Commission applies those principles in practice in respect of risk, licensing, compliance, enforcement and publicity. This document was also recently revised and is an important document for operators, as it sets out the Commission’s approach to dealing with any compliance or enforcement issue and the desire to resolve matters quickly and effectively, where possible, and the possibility of resolution by means that fall short of formal sanction. In those cases where enforcement action is not taken, and/or a formal review is not commenced, the Commission will expect the operator to act promptly to take the necessary remedial action.

*Licensing Decisions: Procedures and Guidance for the Regulatory Panel* is designed to assist the Regulatory Panel (the “Panel”) to carry out its functions in accordance with

the Commission's policies and procedures.

*The Statement of Principles for Determining Financial Penalties*, which sets out the principles to be applied by the Commission and includes regard to: the seriousness of the breach of condition in respect of which the penalty is proposed; whether or not the licensee knew or ought to have known of the breach; and the nature of the licensee (including, in particular, the licensee's financial resources).

Factors which the Commission will take into consideration include (this list is not exhaustive):

- the extent to which the circumstances from which the contravention or failure arose were within the control of the licensee
- the presence or absence of internal controls or procedures which were intended to prevent the breach
- the steps that the licensee has taken since the breach was identified to avoid recurrence of the breach

### Criminal investigations

Under section 27 of the Act, the Commission has the power to investigate whether a criminal offence has been committed. As a general rule, the Commission will not normally pursue a criminal investigation into a licensed operator, as in most cases the matter under investigation is likely to be capable of being dealt with by the exercise of the Commission's regulatory powers. However, there might be circumstances where the commencement of a criminal investigation is merited; for example, if a licensee were suspected of cheating, or if a licensee knowingly misled or provided false information to the Commission.

There may be circumstances where the Commission's investigations uncover evidence that a serious criminal offence may have been committed, which falls outside its jurisdiction. In such cases, the Commission will refer the matter to the police or other body.

### Voluntary settlement

Carrying out licence reviews can be expensive and time-consuming for both the operator and the Commission. The Commission is therefore keen to encourage

licensees to come forward and make full disclosure of all the relevant facts relating to an investigation, at as early a stage as possible and to seek to achieve compliance without a regulatory review.

Ultimately, any decision on voluntary settlement (also known as "enhanced compliance") is in the Commission's discretion, as it will consider whether its investigations need to continue. It is therefore critically important that any voluntary settlement is based on full disclosure of all facts. The earlier full disclosure is made, the more credit will be given to a licensee.

The Commission will *not* initiate voluntary settlements, but will remind licensees at the outset of any review process that such an option exists. The process will not apply where the Commission decides to carry out a criminal investigation.

The Commission will only settle in appropriate cases where the agreed terms of the decision result in acceptable regulatory outcomes and enable the Commission to fulfil its central role in improving compliance. Openness and transparency are central to upholding the licensing objectives, as it may for example be important to send clear messages to the wider gambling industry or provide redress to consumers. Therefore, voluntary settlements will typically result in a high degree of publicity, certainly within the industry, and will not be confidential.

Paragraph 5.5 of the Commission's recently amended *Licensing, Compliance and Enforcement Policy Statement* states that in deciding whether enhanced compliance is sufficient to protect the licensing objectives, the Commission will take the following matters into account (the list is not exhaustive):

- the nature and extent of the concerns
- whether concerns have been raised about the licensee in the past
- the scale of the concerns across the licensed entity
- the involvement of senior management
- the extent of any attempt to conceal any failure
- the impact on customers
- the absence of internal controls or procedures intended to deal with the particular concern

- the way in which concerns were reported to the Commission.

In 2013 and 2014, there was a wave of voluntary settlements that included public statements, relating to Aspers, Coral, Inspired Gaming, Ladbrokes and William Hill. It is worth noting that these are all household and reputable names, no doubt chosen by the Commission for maximum effect on the basis that: (a) if this can happen to them, it can happen to any operator; (b) it ensured maximum publicity of this message across the industry; and (c) in view of their scale, more UK customers were potentially or actually affected.

In our view, the trend of voluntary settlements is very likely to continue. As soon as an operator is made aware of a possible review, an urgent, full and realistic assessment must be undertaken of the seriousness of any breaches and the likely Commission approach to failings. Only then can the operator determine strategy in dealing with the matter and whether voluntary settlement may be appropriate.

Voluntary settlements are a relatively new and emerging regulatory enforcement tool and every case is different, not least because they are dependent upon the operator's compliance track record. In our experience, the Commission has significantly intensified its level of supervision of its licensees recently, including random spot-checks of customer-facing websites, periodic reviews of customer terms and conditions and audit visits.

Regardless of the type of engagement with the Commission and the merits of the arguments, the most important point for licensees is to cooperate fully and to always act openly and transparently. Licensees who are uncooperative, or less than open with the Commission, can almost certainly expect higher levels of regulatory action and intervention.



**Bahar Alaeddini** is a Senior Associate at Harris Hagan and specialises in regulatory law, advising major B2C and B2B operators, as well as start-up operators. She has worked with clients on Commission investigations, voluntary settlements and Panel reviews.