

# WHAT CAN WE EXPECT IN THE YEAR AHEAD?



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**A**t the start of a new year it is always tempting to speculate about what the future might hold and indulge in a little crystal ball gazing - so what can we expect from gambling regulation in Great Britain in 2017?

## **Greater Scrutiny and Higher Regulatory Penalties From the Gambling Commission**

It is now over two years since Great Britain introduced a “point of consumption” licensing regime. Now that online operators have begun to settle into being licensed and regulated in this jurisdiction, the Gambling Commission has issued a strong call to its licensees to raise their standards, in particular by putting customers at the heart of what they do. This applies not just to new Commission licensees in the online sector, but to long-standing land based licensees as well. It would not be surprising to see another high profile public statement this year, in respect of social responsibility and/or anti-money laundering failings by a large operator. Hopefully, however, by taking the Commission’s call to action to heart operators will be able to head off this possibility.

In November 2016, Sarah Harrison (Chief Executive of the Commission) warned of “the likelihood of higher penalties going forward, in particular where we see systemic and repeated failings”. She also made clear that operators who have previously been warned may not be treated leniently a second time. To put the change of approach into effect, the Commission is expected to begin a review of its Licensing, Compliance and Enforcement policy statement, with a view to removing the current bias towards voluntary settlements rather than regulatory sanctions. This will begin with a consultation, due to be released in January. It should be some comfort to proactive and conscientious

operators that the Commission does plan to offer discounts on financial penalties for those reaching an early agreement with the Commission.

**Review of maximum stakes on FOBTs**

The (often emotive) debate around Fixed-Odds Betting Terminals continues to dominate the betting industry. At the end of 2016, the Department for Culture, Media and Sport ran a call for evidence in relation to its Triennial Review of Gaming Machines and Social Responsibility Measures. This Review will take place during 2017.

Some form of action in relation to FOBTs is likely to be recommended following the review and a key area of consideration is whether maximum stakes on FOBT machines should be reduced from the current £100. The decision on this critical point ought to be entirely evidence based, but unfortunately it is just as likely to be a political decision and the outcome is, therefore, impossible to predict.

**Tightening restrictions on advertising**

The DCMS Review mentioned above will also consider evidence in relation to gambling advertising. It has been reported, although



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not officially stated by the Government, that serious consideration is being given to restricting all gambling advertising to after the 9pm watershed. This would mean removing the exceptions which enable bingo to be advertised before the watershed and sports betting around coverage of sporting events. The window for respondents to the call for evidence was short, and it is difficult to predict whether any evidence will have been submitted which would persuade the Government to take this step. However, it would be surprising if some form of additional restriction on advertising were not imposed, again given the political pressure to do so.

### **Some clarity on regulating eSports**

There is no doubt that eSports will continue to grow in popularity in 2017, both in terms of those taking part in competitions and those betting on their outcome. Following receipt of responses to its Discussion Paper on “Virtual currencies, eSports and social gaming” the Commission is likely to publish a position paper and/or guidance note on these issues in the first half of 2017. This will almost certainly conclude that products offering betting on eSports to customers located in Great Britain require a remote betting operating licence, whether bets can be placed in real money or a virtual currency which is capable of being exchanged for real money.

In relation to operators offering customers the opportunity to take part in an eSport for prizes, the Commission’s conclusion is likely to be that the licence requirement depends on the nature of the eSport in question, in particular the extent to which it includes an element of chance. This will inevitably leave some operators remaining unsure as to whether they should hold a licence from the Commission, but the Commission will be reluctant to set one rule which applies to such a wide variety of products.

Clarity on the licence requirements of eSports products presents an opportunity for those already holding the required licences, who are well placed to capitalise on the growing popularity of these products.

### **CJEU to rule on Gibraltar tax case**

The Court of Justice for the European Union is currently considering Gibraltar’s case regarding the UK’s decision to impose a 15% point of consumption tax on all gambling revenue from UK residents, and a decision should be forthcoming at some point

this year. The CJEU’s ruling on this point will provide some clarity on the vexed question of Gibraltar’s status within the UK and the EU, as well as whether the UK government is entitled to impose a tax on operators based in other member states.

### **And finally...**

This article would not be complete without a mention of the “B” word. Article 50 will almost certainly be triggered by the end of 2017, if it does not happen in March as promised by Theresa May. This still leaves Britain’s departure from the European Union two years off, so online operators licensed in Great Britain can continue to enjoy the (admittedly limited) benefits of being part of an EU jurisdiction – such as the ability to argue that they have the freedom to provide their services to customers located in member states whose gambling regimes have been held to be in contravention of EU law. These benefits are, in any event, being eroded by the introduction of EU law compliant point of consumption licensing regimes. The impact of Brexit on gambling operators may, in reality, be limited to the results of a potential general economic downturn and further devaluing of the pound.

2017 promises to be another eventful year, both for the gambling industry and more generally. In general, regulation appears to be tightening which can present challenges for operators, but also opportunities to meet requirements in innovative ways and stand out from the competition. So here’s wishing you a successful and prosperous year, may you continue to live in interesting times... **CGI**



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Melanie Ellis is a senior associate in the gambling law team at Harris Hagan. After graduating from St Hilda's College, Oxford in 2003, Melanie trained as a barrister before joining Harris Hagan in 2005 and qualifying as a solicitor in 2008. Melanie has developed expertise in dealing with all aspects of gambling law advising major casino operators, online betting and gaming operators and start up companies. She has advised on establishing operations in the UK and in offshore jurisdictions, on issues relating to advertising in the UK, on lotteries and prize competitions and 'due diligence' on the licensing aspects of corporate acquisitions. She regularly contributes to gaming law publications.