

Promoting society and local authority lotteries

Advice for society and local authority lotteries which require a licence or registration
November 2009

1 Introduction

- 1.1** Lotteries are illegal unless they fall into one of the categories specifically permitted by law. Apart from the National Lottery (which has its own dedicated legislation), the relevant law is contained in the Gambling Act 2005 (the Act). The Act creates eight categories of permitted lottery. Three of these categories (small and large society lotteries and local authority lotteries) require either a licence from the Gambling Commission (the Commission) if they are a large society or local authority lottery, or registration with a licensing authority if they are a small society lottery. This advice relates to these lotteries. Advice on the remaining five categories can be found in a separate document called *Organising small lotteries (Gambling Act 2005)*.
- 1.2** This advice is not comprehensive or a binding interpretation of the law and anyone intending to run a lottery should refer to the Act and if necessary seek independent legal advice to ensure that they conform to the law before proceeding. Separate advice has been issued to local authorities in respect of small society lotteries under their jurisdiction.
- 1.3** The Act has three licensing objectives that are central to the regulatory regime and underpin the functions that the Commission and licensing authorities perform in respect of all types of gambling, including lotteries. These are:
- preventing gambling from being a source of crime or disorder, being associated with crime or disorder, or being used to support crime
 - ensuring that gambling is conducted in a fair and open way
 - protecting children and other vulnerable people from being harmed or exploited by gambling.

2 Definition of a lottery

- 2.1** In simple terms a lottery is a kind of gambling that has three essential elements:
- payment is required to participate
 - one or more prizes are awarded
 - those prizes are awarded by chance.
- This is set out more formally in the Act which defines two types of lottery, a simple lottery and a complex lottery.
- 2.2** An arrangement is a simple lottery if:
- people are required to pay to participate in the arrangement
 - in the course of the arrangement one or more prizes are allocated to one or more people in a class
 - the prizes are allocated by a process which relies wholly on chance.

- 2.3** An arrangement is a complex lottery if:
- people are required to pay to participate in the arrangement
 - in the course of the arrangement one or more prizes are allocated to one or more people in a class
 - the prizes are allocated by a series of processes
 - the first of those processes relies wholly on chance.
- 2.4** In addition, section 14(5) of the Act stipulates that, for the purpose of these definitions, a process that requires people to exercise skill or judgment or display knowledge is to be treated as relying wholly on chance if:
- the requirement cannot reasonably be expected to prevent a significant proportion of people who participate in the arrangement from receiving a prize
 - it cannot reasonably be expected to prevent a significant proportion of people who wish to participate in the arrangement from doing so.

3 Meaning of society and local authority lotteries

Society lotteries

- 3.1** Society lotteries are lotteries promoted for the benefit of a non-commercial society. Such societies are organisations that have distinct aims and objectives and meet the definition of a non-commercial society set out in the Act.
- 3.2** A society is non-commercial if it is established and conducted:
- for charitable purposes
 - for the purpose of enabling participation in, or of supporting, sport, athletics or a cultural activity
 - for any other non-commercial purpose other than that of private gain.

Local authority lotteries

- 3.3** Local authority lotteries are lotteries promoted by local authorities themselves. These differ from society lotteries registered with a licensing authority. Authorities may use the net proceeds of such lotteries for any purpose for which they have power to incur expenditure.

4 Large society and local authority lottery licensing requirements

- 4.1** A society lottery is a large lottery and may only be run under an operating licence issued by the Commission if the arrangements for that lottery are such that total proceeds (ticket sales) from it:
- may in a single society lottery exceed £20,000,
 - or the proceeds of previous lotteries in the same calendar year have already reached or may, taking into account the lottery in question reach £250,000 in one calendar year.
- 4.2** If a society promotes a lottery which, applying the above rules, is a large lottery (the first lottery) then every subsequent lottery it promotes in that year and in the following three years will also be a large lottery and will require the society to hold a lottery operating licence issued by the Commission.
- 4.3** All local authority lotteries must be run under an operating licence issued by the Commission.
- 4.4** Societies and local authorities that allow players to participate in their lotteries by means of remote communication (internet, telephone etc) will be required to hold a remote lottery operating licence, whether or not their activities also require them to hold a non remote lottery operating licence.

4.5 General information about the Commission's licensing requirements is given in this document. Specific guidance is available on the Commission's website.

5 Small society lotteries

5.1 Societies that run small society lotteries, that is to say lotteries in which no more than £20,000 worth of tickets are put on sale and where the society's aggregate proceeds from lotteries do not exceed £250,000 a year may operate without a Commission licence provided they register with their licensing authority. Where it becomes apparent that a small society lottery will exceed either of the monetary limits, it is the responsibility of the society to ensure they apply to the Commission for a licence, before the limit is exceeded.

5.2 The promoting society of a small society lottery must, throughout the period during which the lottery is promoted, be registered with a licensing authority in England and Wales or a licensing board in Scotland.

5.3 The societies are required to be registered with their licensing authority in the area where their principal office is located. If the local authority believes that the society's principal office is situated in another area it should inform the society as soon as possible and if possible inform that other authority.

5.4 Details of registration requirements and procedures can be obtained from the licensing department of the relevant local authority.

5.5 Societies that run small society lotteries under registration with a licensing authority and that sell tickets by means of remote communication (internet, telephone etc) are not required to hold a remote gambling licence issued by the Commission.

6 Personal Management Licences

6.1 A society or local authority licensed by the Gambling Commission is required to have at least one Personal Management Licence (PML) holder if they have more than three people in qualifying positions.

6.2 A qualifying position is one where an individual by the terms of their appointment has primary responsibility for:

- the management of the licensed activity (ie the lottery)
- the financial affairs of the society
- ensuring the society complies with the requirements of the Gambling Act
- the marketing of the lottery
- management of the IT used in connection with the lottery.

6.3 In deciding who should hold the PML a society or local authority should identify the relevant senior individual who takes overall management responsibility for the promotion and proper management of the lottery and for compliance with the regulatory regime as a whole. The PML holder must be a trustee or officer of an unincorporated society, a director of a corporate society or a partner where the society is a partnership. In the case of a local authority lottery the PML holder must be someone in a senior management post who holds the relevant delegated authority from the licensing authority.

6.4 If a society has three or fewer people in qualifying positions they will qualify as a small scale operator and will be exempt from the need to have a PML holder. In those circumstances one individual from the society who is identified as the senior person responsible for the overall conduct of the lottery (usually the chief executive, a trustee, director or member of the senior management board) must complete the personal declaration (Annex A) of the Operating Licence application form and submit it to the Commission along with a Criminal Records Bureau form.

6.5 A society must not operate any lottery unless it has at least one PML holder or at least one Individual who has submitted an Annex A and is named on the operating licence. If the people holding PMLs or the people who have previously submitted Annex A Personal Declarations under the small scale operator exemption change, the society must notify the Commission as soon as possible. If departures leave the society without a PML holder or anyone who has submitted an Annex A, then a new individual needs to make an application for a PML, or in the case of those operators subject to the small scale operator exemption, submit an Annex A. The latter will also require an amendment to the operating licence. Both instances will require a Criminal Records Bureau check as well as appropriate payment.

6.6 Detailed guidance on PMLs and the small scale operator exemption are available on the Commission's website.

7 External Lottery Managers

7.1 A licensed or registered society or local authority may employ an external lottery manager (ELM) to manage all or part of its lottery. An ELM is defined in section 257 of the Act as someone that is a person or a body who makes arrangements for a lottery on behalf of a society or local authority but is not a member, officer or employee of the society or authority.

7.2 All ELMs must hold a lottery manager's operating licence issued by the Commission before they can manage a licensed society or local authority lottery or a society lottery registered with a local authority. It is the responsibility of the society or local authority to ensure that before employing anyone to manage all or part of their lottery that person or body holds a valid lottery manager's operating licence issued by the Commission. A list of licensed ELMs is available on the Commission's website.

7.3 The fact that a society or local authority may employ a licensed ELM to manage all or part of its lottery does not absolve the society or local authority from its responsibility for ensuring that the lottery is conducted in such a way as to ensure that it is lawful and fully complies with all licence conditions and the codes of practice. Both the society or local authority and the ELM require an operating licence from the Commission.

7.4 ELMs are also required to hold Personal Management Licences for a range of directors and senior managers, including the managing director, chief executive, finance director, compliance manager, marketing manager and IT manager.

7.5 ELMs also need to hold a remote gambling licence if they intend to sell tickets by means of remote communication (internet, telephone etc).

8 External Lottery Managers and service providers

8.1 Uncertainty can arise as to whether services provided to societies or local authorities amount to the promotion or facilitation of a lottery, in which case the provider needs an ELM licence if they are to avoid committing an offence, or instead amount to the provision of services which do not amount to promotion or facilitation, in which case no licence is needed. The following paragraphs give some guidance on the distinction. But anyone who is uncertain whether the services provided require the provider to hold an ELM licence should contact the Commission for advice.

8.2 Under section 252 of the Act, a person promotes a lottery if they make or participate in making the arrangements for a lottery. It says further that a person promotes a lottery in particular if they:

- make arrangements for the printing of tickets
- make arrangements for the printing, publication and distribution of promotional material
- make arrangements to advertise a lottery

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- invite an individual to participate in a lottery
- sell or supply tickets
- offer to sell or supply tickets
- use premises for the purpose of allocating prizes or for any other purpose connected with the administration of a lottery.

Promotional material is defined as a document that advertises, invites participation, contains information about how to participate, or lists winners, in a particular lottery.

8.3 A person commits an offence under the Act if they carry out any of these activities on behalf of a society or local authority unless:

- they are an officer, employee or a member of a licensed or registered society or local authority
- or they are a licensed ELM directed by a society or local authority to run all or part of its lottery.

8.4 Under section 259, a person facilitates a lottery if they:

- print lottery tickets for a specified lottery
- print promotional material for a specified lottery
- advertise a specified lottery.

A person commits an offence of facilitating a society or local authority lottery unless they act in accordance with an operating licence.

8.5 Whether or not a person or body carrying out activities on behalf of a society or local authority requires licensing as an ELM will depend on the activities they conduct and whether they amount to either promoting or facilitating a lottery and, if so, the circumstances in which they carry out those activities. For instance companies which print tickets for or which advertise lotteries under direction from licensed or registered societies or licensed ELMs do not themselves require a licence because, although they are facilitating a lottery, they are acting in accordance with a licence held by someone else.

8.6 To take another example, direct mailing companies employed by society lotteries may be classed as either a service provider or ELM, depending on the functions they carry out. If their only role is to post tickets to people to participate in the lottery from a list provided by the society or ELM, the Commission does not think they are doing any of the things that fall into the definition above of promoting a lottery. However, where a person or body is responsible for and manages part or all of the lottery and decides issues such as where to target promotional material, sources people to enter the lottery and deals with ticket transactions, they are carrying out functions that are caught by the definition of promoting a lottery and require a licence.

8.7 The Commission considers that the Act provides a comprehensive definition of what amounts to promoting or facilitating a lottery for the purpose of determining whether an ELM licence is needed for people or bodies providing services to societies or local authorities. In cases where there is doubt whether or not a person or body is acting in the role of an ELM, the Commission will have regard to the overall management and degree of control of the lottery undertaken by the society and the other party in question. Where the person or body making any of the arrangements for a society or local authority lottery, for example, has control of how the lottery is promoted and managed, the Commission's view is that they will be acting as an ELM and will need to hold the relevant operating licence issued by the Commission if they are to avoid committing an offence under the Act. Key indicators the Commission uses in reaching a conclusion include:

- who decides how the lottery scheme will operate and when changes to the scheme should be made
- who controls the promotion, marketing and advertising of the lottery
- who sells the tickets
- who pays the prizes
- who appoints and manages sub contractors
- banking arrangements and the process for handling the proceeds of the lottery
- the contractual agreements between the society and the other party.

9 Remote lotteries

- 9.1** Section 4 of the Gambling Act specifies that remote gambling means gambling in which people participate by the use of remote communication including the internet, telephone, television, radio or any other electronic or technological method of communication. Normal letter post is not a form of remote communication for the purposes of the Act.
- 9.2** Societies and local authorities requiring licensing by the Commission and which allow players to participate in their lotteries by means of remote communication will be required to hold a remote lottery operating licence. For example, those accepting payments by telephone, or over the internet, will require a remote operating licence.
- 9.3** Holders of a remote lottery operating licence will be required to comply with the technical standards and the other specific licence conditions and codes of practice issued by the Commission that relate to remote gambling. Only remote lottery operating licence holders that accept more than £250,000 worth of entries by remote means per year will be required to meet the full testing and third party security audit requirements. Further details are available on the Commission's website.
- 9.4** Societies registered with licensing authorities that allow people to participate in their lottery by way of remote communication are not required to hold a remote lottery operating licence.

10 Gambling Commission licence conditions and codes of practice

- 10.1** All societies and local authorities licensed by the Commission to run lotteries are required to comply with the specific licence conditions and codes of practice relevant to them. The specific licence conditions are set out at the time a licence is issued.
- 10.2** Some of the licence conditions and requirements of the codes of practice are referred to below. Specific details are contained in the Commission's *Licence Conditions and Codes of Practice*, which is available on the Commission's website.

11 Society and local authority lotteries - proceeds and other monetary limits

- 11.1** A society or local authority lottery must apply a minimum of 20% of the gross proceeds of each lottery directly to the purposes of the society or in the case of a local authority a purpose for which the authority has power to incur expenditure.
- 11.2** Up to a maximum of 80% of the gross proceeds of each lottery may be divided between prizes and the expenses of the lottery.
- 11.3** In a single large society or local authority lottery the maximum value of tickets that can be sold is £4 million. The maximum aggregate value of lottery tickets that can be sold in any calendar year is £10 million.
- 11.4** The maximum prize in a single lottery is £25,000 in the case of a small society lottery and £25,000 or 10% of the proceeds (gross ticket sales), whichever is greater, in the case of a large society or local authority lottery. Therefore, a society that sells the maximum number of tickets in a single large lottery (£4 million) could award a maximum top prize of £400,000.
- 11.5** Rollovers are permitted provided the maximum single prize limit is not breached.
- 11.6** Every ticket in the lottery must be the same price and the cost of purchased tickets must be paid to the society before entry into the draw is allowed.

- 11.7** There is no maximum price of a lottery ticket.
- 11.8** No lottery organised by a large society or local authority may operate in such a way that a player can win a prize greater than the statutory prize limit of £400,000.
- 11.9** No lottery organised by a large society or local authority may be linked to any other lottery in such a way that a person who wins a prize in one also wins a prize in another, unless the aggregate of those prizes is less than or equal to the statutory prize limit of £400,000.
- 11.10** Where separate lotteries have a feature that allows a player to win a larger prize than the statutory maximum of £400,000 by selecting the same numbers in different lotteries and these lotteries are decided by the same draw, no advertisement or other marketing of the lotteries may refer to this feature. A lottery cannot be linked to a prize competition or free draw if the maximum amount which a person can win is more than £400,000 in aggregate.

12 Ticket information

- 12.1** All tickets in a society lottery licensed by the Commission or registered with a local authority must state:
- the name of the society on whose behalf the lottery is being promoted
 - the price of the ticket
 - the name and address of the member of the society responsible for the promotion of the lottery. In the case of a small society lottery run under local authority registration the name and address of the ELM if there is one may be given as an alternative
 - the date of the draw, or the means by which the date may be determined
 - the fact, where that is the case, that the society is licensed by the Commission
 - the website address of the Commission, if licensed by the Commission.
- 12.2** Tickets that are issued through a form of remote communication or any other electronic manner must specify the information above to the purchaser of the ticket and ensure that the message can be either retained (saved) or printed.

13 Sale of tickets

- 13.1** Tickets in society and local authority lotteries promoted under licence from the Commission must not be sold to anyone in a street. Tickets may be sold by a person in a kiosk or from a shop premises in a street, or from door to door. For this purpose a street includes any bridge, road, lane, footway, subway, square, court, alley or passage (including passages through enclosed premises such as shopping malls) whether a thoroughfare or not. The Commission has recommended to licensing authorities that they also apply this restriction to small society lotteries. Small societies should check the licensing authority they are registered with.
- 13.2** Lottery tickets must not be sold to, or by, those under the age of 16.
- 13.3** Society lottery tickets may be sold from vending machines. These machines may be sited anywhere that a society lottery ticket can be sold (see 13.1). They are not subject to restrictions on the number that can be sited and no licence is required to site or supply them. However, licensed operators (societies and/or ELMs) must ensure that they fulfil their social responsibility duties under the licence conditions and codes of practice in respect of preventing underage play and problem gambling. In the case of lottery ticket vending machines the operator may wish to ensure that the machine is located in a supervised area or that some other arrangements are put in place to prevent underage and problem gambling.
- 13.4** To minimise the risk of fraud, societies licensed by the Commission should adopt one or

more of the following measures when sending unsolicited mailings of lottery tickets:

- prohibit the unsolicited mailing of lottery tickets to non members of the promoting society
- limit the value of tickets sent to any one address which is not that of a member of the promoting society to £20
- maintain records of tickets distributed and not returned. The Commission recommends that these records should include details of the address to which the tickets have been sent, their total value and their serial number. Information on unsold tickets not returned by the date of the lottery draw should be retained for at least six months.

13.5 Society lottery operator licences (remote and non remote) from the Commission allow societies to sell lottery tickets within Great Britain (England, Scotland, and Wales). If you wish to sell lottery tickets outside of Great Britain you will need to check the laws that apply in that jurisdiction.

14 Financial requirements

14.1 For society and local authority lotteries promoted under licence from the Commission, accounting records must be retained for a minimum of three years from the date of any lottery to which they relate and they must be made available for inspection by the Commission on request. These records must contain, in respect of each lottery, details of the total proceeds of each lottery, the expenses of the lottery, and the number of sold and unsold tickets.

14.2 Where the cumulative proceeds of lotteries promoted by a society or local authority exceed £1,000,000 in a calendar year, the Commission must be sent a written confirmation from a statutory auditor that the proceeds of those lotteries have been fully accounted for in annual audited accounts. Such confirmation must be provided within ten months of the end of the period to which the accounts relate.

14.3 A statutory auditor is someone who is eligible for appointment as a company auditor under section 1210 of the Companies Act 2006 but is not, in the case of a society:

- a) a member of the society
- b) a partner, officer or employee of such a member
- c) a partnership of which a person falling within (a) or (b) is a partner.

15 Lottery submissions

15.1 Every society and local authority licensed by the Commission must provide a submission for each lottery. This must show the total proceeds and how they have been distributed between prizes and expenses and the amount applied directly to the society's purposes, or purpose for which the local authority has power to incur expenditure.

15.2 A licensed society's or local authority's submission must be sent to the Gambling Commission no later than three months after the date of the lottery draw or in the case of an instant (scratchcard) lottery within three months of the last date on which tickets in the lottery were on sale. At the time it is submitted each submission must be verified by a Personal Management Licence holder, a qualified person in the case of a small scale operator or the person (in the case of societies) named on the lottery tickets as being responsible for the promotion of the lottery.

15.3 Submissions can be sent to the Commission on-line using the relevant form or the form can be downloaded and sent through the post.

15.4 Every society registered with a local authority to run small society lotteries must submit a statement providing the following information:

- the date on which tickets were available for sale or supply and the date of the draw

- the total proceeds of the lottery (remote and non remote)
- the amounts deducted by promoters of the lottery in providing prizes, including rollovers
- the amounts deducted by the promoters of the lottery in respect of costs incurred in organising the lottery
- the amount applied directly to the purpose for which the promoting society is conducted or for which the local authority has power to incur expenditure (at least 20% of the gross proceeds)
- whether any expenses incurred in connection with the lottery were not paid for by deduction from the proceeds, and, if so, the amount of expenses and the sources from which they were paid.

15.5 A registered society's statement must be sent to the local authority within three months beginning on the day the draw (or last draw) in the lottery took place. It must be signed by two members of the society appointed in writing for that purpose by the society's governing body and accompanied by a copy of that appointment.

16 Social responsibility

16.1 Lotteries are a form of gambling and as such societies and local authorities are required to ensure that children and other vulnerable people are not exploited by their lottery.

16.2 The minimum age for participation in a society or local authority lottery is 16 years of age. A person commits an offence if they invite or allow a child to enter such a lottery. Licensed societies and local authorities running lotteries must have written policies and procedures in place to help prevent and deal with cases of under-age play.

16.3 Licence holders must take all reasonable steps to ensure that information about how to gamble responsibly and how to access information and help in respect of problem gambling is readily available.

16.4 Further information about social responsibility requirements is contained in the Commission's *Licence Conditions and Codes of Practice* document.

17 B3A lottery machines

17.1 Section 235(2)(d) of the Act and Regulations under that section define a B3A machine as one where the results of the lottery are determined by the machine and/or the machine displays the results of the lottery without an interval of at least one hour between the sale of the ticket and the announcement of the result. These machines can only be sited in a members' club or miners' welfare institute holding a club gaming or club machine permit issued by the licensing authority. Clubs and institutes are entitled to site one category B3A machine on the premises.

18 Proceeds and profits

18.1 Section 254 of the Act clarifies what is meant by 'proceeds' and 'profits' of a lottery.

18.2 'Proceeds' are the total amount paid for tickets before any deductions.

18.3 'Profits' are the amount of proceeds less any deductions for prizes, rollovers, and reasonable expenses incurred in connection with running the lottery.

19 Misusing profits of lotteries

19.1 Under section 260 of the Act it is an offence to use or permit profits from a large society or local authority lottery to be used for any purposes other than for the purpose for which the lottery was permitted or promoted. Section 261 applies the same offence to small society lotteries.

20 Contacts

Gambling Commission

www.gamblingcommission.gov.uk

Department for Culture Media and Sport

www.culture.gov.uk

The Lotteries Council

www.lotteriescouncil.org.uk

Hospice Lotteries Association

www.hospicelotteries.org.uk

Gamcare

www.gamcare.org.uk

The GREaT Foundation

www.thegreatfoundation.org.uk

Charity Commission for England & Wales

www.charity-commission.gov.uk

Office of the Scottish Charities Regulator

www.oscr.gov.uk

Trading Standards

www.tradingstandards.gov.uk

Local Authority Coordinators of Regulatory Services

www.lacors.gov.uk

Institute of Fundraising

www.institute-of-fundraising.org.uk

Charity Law Association

www.charitylawassociation.org.uk

Committee of Advertising Practice

www.cap.org.uk

National Lottery Commission

www.natlotcomm.gov.uk

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www.gamblingcommission.gov.uk

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