

# *Gambling Act 2005*

## *Lotteries - Guidance Fact Sheet*



This document is issued by Wigan Council as a general guide to assist those involved with lotteries. They are not a full and authoritative statement of the law and do not constitute professional or legal advice. You are advised to take your own independent legal advice.

### 1. Introduction

This advice provides a general guide to the main principles and requirements of lotteries law as contained in the Gambling Act 2005 (the 'Act') which repeals the Lotteries and Amusements Act 1976.

The Act introduces a new regulator for all gambling (except for the National Lottery and Spread Betting) in Great Britain, the Gambling Commission.

It introduces a new regime for:

- (a) Licensing Large **Society Lotteries & Local Authority Lotteries** (these are administered by Local Authorities for the benefit of Local Authorities), both of which will be licensed by the Gambling Commission, and;
- (b) **Exempt Lotteries** (these do not have to be licensed with either the Gambling Commission or the Licensing Authority) and these include Small Society Lotteries, Incidental Non-Commercial Lotteries, Private Lotteries and Customer Lotteries. However, as an exception, Small Society Lotteries are required to be registered with Licensing Authorities.

The National Lottery continues to be regulated by the National Lottery Commission under separate legislation.

The Act allows for a general relaxation of lottery law, in particular it:

- relaxes limits on the percentage of proceeds that may be applied to expenses or prizes;
- allows rollovers of prize fund from one lottery to another;
- allows for sale of tickets by an automated process; and
- removes maximum price for a lottery ticket.

## 2. Definition of a Lottery

An arrangement is a **simple** lottery if:

- persons 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 members of a class; and
- the prizes are allocated by a process which relies wholly on chance.

An arrangement is a **complex** lottery if:

- persons 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 members of a class;
- the prizes are allocated by a series of processes; and
- the first of those processes relies wholly on chance.

A process which requires persons to exercise skill or judgement 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 persons who participate in the arrangement from receiving a prize; and
- it cannot reasonably be expected to prevent a significant proportion of persons who wish to participate in the arrangement from doing so.

## 3. Types of lotteries

### (a) Large Society and Local Authority Lotteries

If the arrangements for a Society Lottery are such that total proceeds (ticket sales) from it may in a single Society Lottery **exceed £20,000** or proceeds of previous lotteries in the same calendar year have already reached or may, taking into account that lottery in question, **reach £250,000** in one calendar year then the lottery is a large lottery and may only be run under a Lottery Operating Licence issued by the Gambling Commission.

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 Gambling Commission.

Society and Local Authority Lotteries who allow players to participate in their lottery by means of remote communication 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.

All Local Authority Lotteries must be run under an Operating Licence issued by the Gambling Commission.

A Local Authority may use the net proceeds of its lottery for any purpose for which it has power to incur expenditure.

## **(b) Exempt Lotteries**

Exempt lotteries are all those specified in the Act as permitted to be run without a licence from the Gambling Commission or Licensing Authority. These include Small Society Lotteries which are required to register with their Licensing Authority.

This section is intended to provide information on whether proposals for a lottery give rise to the need for either a Gambling Commission licence or registration with the Licensing Authority.

There are four types of exempt lottery:

- (i) Small Society Lotteries,
- (ii) Incidental Non-Commercial Lotteries,
- (iii) Private Lotteries; and
- (iv) Customer Lotteries.

### **(i) Small Society Lotteries**

Under the previous gambling legislation, the term 'Society' was defined, however this is not the case under the Gambling Act 2005. Therefore, provided the Society states in their application that it is established and conducted for one or more of the bullet points shown below, then the status of the Society seeking Registration has to be accepted. A Society commits an offence if it fails to provide statutory information in relation to its operation or gives false or misleading information in connection with a statutory return.

Societies who run Small Society Lotteries, that is lotteries which are not Large Lotteries as defined above (essentially those in which **£20,000 (or less)** 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 Gambling Commission Licence provided they register with their local Licensing Authority.

The Societies will be required to be **registered** with the local Licensing Authority in the area where their **Principal Office** is located. If the local Licensing 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 Licensing Authority.

Societies who run Small Society Lotteries under Registration with a Licensing Authority and who sell tickets by means of remote communication (Internet, telephone etc) will not be required to hold a Remote Gambling Licence issued by the Gambling Commission.

Small Society Lotteries are lotteries promoted for the benefit of a non-commercial society. 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, or
- for any other non-commercial purpose other than that of private gain.

## (ii) Incidental Non-Commercial Lotteries

An incidental non-commercial lottery is one that is incidental to a non-commercial event, for example a lottery held at a school fete or at a social event such as a dinner dance. An event is non-commercial if all the money raised at the event including entrance fees goes entirely to purposes that are not for private gain: therefore a fundraising social event with an entrance fee would be non-commercial if the profits went to a society but would not be non-commercial if the profits were retained by the organiser for private gain.

The Act specifies that:

- the promoters of the lottery may not deduct more than the amount prescribed by the Secretary of State (or Scottish Minister) from the proceeds in respect of the expenses, such as the cost of printing tickets, hire of equipment etc. This is currently £250; (this may increase to £500 following DCMS Consultation);
- not more than £250 can be spent on prizes; (this may increase to £500 following DCMS consultation);
- the lottery cannot involve a rollover of prizes from one lottery to another; and
- all tickets must be sold at the location during the event, and the result made public while the event takes place.

## (iii) Private Lotteries

There are three types of private lotteries that qualify as exempt lotteries:

- **Private lottery** – these can only be promoted by one of its members and tickets can only be sold to other members of that same society and persons on premises used for the administration of the society e.g. sale to the members of a private members club but not their guests or the public. The lottery may only be promoted for a purpose for which the society is conducted, and the society can be any group or society, provided it is not established and conducted for purposes connected to gambling.
- **Work lottery** - the promoter of the lottery must work on the premises and tickets can only be sold to other people who work on

the same premises. The lottery must not be run for profit and all the proceeds must be used for prizes or reasonable expenses incurred in organising the lottery e.g. a Grand National sweepstake.

- **Residents' lottery** – these must not be run for profit and all the proceeds must be used for prizes or reasonable expenses. The promoter of the lottery must reside on the premises and tickets can only be sold to other residents of the same premises. The residency requirement can still be satisfied where the premises are not the sole premises in which a person resides e.g. a student halls of residence.

Private lotteries must comply with conditions relating to advertising which state that no advertisement for a private society, work or residents' lottery may be displayed or distributed except at the society or work premises, or the relevant residence, or sent to any other premises.

Private lotteries must comply with conditions set out in Schedule 11 of the Act relating to tickets. In summary these are:

- A ticket in a private lottery may be sold or supplied only by or on behalf of the promoters.
- Tickets (and the rights they represent) are non-transferable.
- Each ticket must state the name and address of the promoter of the lottery, the persons to whom the promoter can sell or supply tickets and the fact that they are not transferable.

Private lotteries cannot be conducted on vessels. The Act's definition of a vessel (Section 353-1) is:

- anything (other than a seaplane or amphibious vehicle), designed or adapted for navigation or other use in, on or over water;
- a hovercraft; or
- anything, or any part of any place, situated on or in water.

The price paid for each ticket in a private lottery must be the same, must be shown on the ticket and must be paid to the promoters of the lottery before any person is given a ticket.

#### (iv) **Customer lotteries**

A Customer Lottery is a lottery run by the occupiers of business premises, who sell tickets only to customers present on their premises.

The Act requires that in customer lotteries:

- the lottery must be arranged to ensure that no profit is made;
- tickets may be sold or supplied only by or on behalf of the promoter;
- no advertisement may be displayed or distributed except on the business premises nor sent to any other premises;

- another customer lottery cannot take place within seven days on the same business premises;
- tickets (and the rights they represent) are non transferable;
- no ticket may result in the winner receiving a prize worth more than £50;
- no rollovers of prizes are permitted.

Each ticket in a customer lottery must state;

- the name and address of the promoter of the lottery;
- the persons to whom the promoters can sell or supply tickets;
- that the rights conferred by the sale or supply of a ticket in a customer lottery are not transferable.

#### 4. Small Society Lotteries - proceeds and other monetary limits

A Small Society Lottery must apply a **minimum of 20%** of the gross proceeds of each lottery directly to the purposes of the Society.

Up to a **maximum of 80%** of the gross proceeds of each lottery may be divided between prizes and the expenses of the lottery.

The **maximum** prize in a single lottery is £25,000.

**Up to £20,000** worth of tickets may be sold and the Society's aggregate proceeds from lotteries must not exceed **£250,000 a year**.

**Rollovers are permitted** provided the maximum single prize limit is not breached.

**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.

**There is no maximum price of a lottery ticket.**

#### 5. Ticket Information

All tickets in a Society lottery licensed by either the Gambling Commission (i.e. Large Society Lotteries) or Registered with a Licensing Authority (i.e. Small Society Lotteries) must state:

- name of the Society on whose behalf the lottery is being promoted;
- price of the ticket;
- 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 Licensing Authority registration the name and address of the External Lottery Manager if there is one may be given as an alternative).
- date of the draw, or the means by which the date may be determined; and

- the fact, where that is the case, that the Society is licensed by the Gambling Commission.

Tickets which are issued through a form of remote communication or any other electronic manner must specify this information to the purchaser of the ticket and ensure that the message can be either retained or printed.

## **6. Financial requirements**

Every Society registered with a local Licensing Authority to run Small Society Lotteries must submit a statement providing the following information:

- date on which tickets were available for sale or supply and the date of the draw;
- total proceeds of the lottery;
- amounts deducted by promoters of the lottery in providing prizes, including rollovers;
- 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; and
- 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.

A registered Society's statement must be sent to the Licensing Authority within three months beginning on the day on which 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.

## **7. Age for participating in a Lottery**

The minimum age for participation in a lottery is 16 years of age.

## **8. Prize Competitions and Free Prize Draws**

### **(a) Prize Competitions**

Prize competitions which are not otherwise betting, gaming or lotteries and free draws are exempt from regulatory control under the Gambling Act.

Genuine prize competitions based on skill, judgement or knowledge are exempt from statutory control. The effect of section 14(5) of the Act is that a process is not to be treated as relying wholly on chance if it contains a requirement to exercise skill and judgement or knowledge that is reasonably likely to:

- prevent a significant proportion of people who wish to participate from doing so; or

- prevent a significant proportion of people who do participate from receiving a prize.

A competition that requires a payment to enter and does not meet the test set out above is likely to be an illegal lottery and the operators of such competitions be liable to prosecution.

## **(b) Free draws**

In order for an arrangement to be a lottery persons must be required to pay to participate. Accordingly a “free” draw is not a lottery and is exempt from statutory control. Schedule 2 of the Act lays down the rules as to what is to be treated as payment for the purposes of distinguishing free draws from lotteries.

**The schedule envisages two circumstances.**

First, cases where there is only one entry route. Here, ‘free’ will include any method of communication (post, telephone or other) at a ‘normal rate’. ‘Normal rate’ is defined as “a rate which does not reflect the opportunity to enter a lottery” (paragraph 5 of Schedule 2). There can be no premium over what it would normally cost to use that method of communication.

Secondly, cases where there is a choice of entry route. Here, the arrangement will not be treated as requiring payment if:

- (i) each individual has a choice whether to participate by paying or by sending a communication;
- (ii) that communication is either a letter sent by ordinary post or some other method which is neither more expensive nor less convenient than entering by the paid route (there can be no premium over what it would normally cost to use that method of communication);
- (iii) the choice must be publicised so that it is likely to come to the attention all potential participants; and
- (iv) the system for allocating prizes does not distinguish between using the paid or the free route.

Schedule 2 also makes provision for product promotions. These are permitted where the price of the good or service does not include any element which reflects the opportunity to participate in the promotion (paragraph 2(c) of Schedule 2).

## **9. Chain Gift Schemes**

Section 43 of the Act makes it an offence to invite others to join a chain-gift scheme or to participate knowingly in the promotion or administration of such a scheme. A person found guilty of the offence could be liable to a fine or imprisonment.



These schemes have most of the relevant features of pyramid selling schemes, but escape the ban on them because they do not involve the sale of any product. An arrangement is a chain gift scheme if:

- person must pay a “joining fee” to participate; and
- he is encouraged to believe that he will receive the joining fees, or part of the joining fee, of other participants, to an amount in excess of the joining fee he paid.

## 10. Enquiries

If you have any questions about lotteries under the Gambling Act 2005, please contact us in the first instance by email at:

[Licensing@wigan.gov.uk](mailto:Licensing@wigan.gov.uk)

### ▪ Other Useful Contacts

#### Gambling Commission

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