

A Guide to Small Society Lotteries

The Gambling Act 2005 denotes local authorities as being responsible for registering small societies.

The status of lotteries under the Act

In relation to the regulation of lotteries, the Gambling Act 2005:

- repeals the Lotteries and Amusements Act 1976 (c.32);
- establishes a licensing regime for large non-commercial society and local authority lotteries, to be administered by the Commission; and
- continues a registration system for small non-commercial society lotteries, to be administered by local licensing authorities.

The Act sets out a definition of a lottery and provides that promoting or facilitating a lottery is illegal, unless it falls into one of two categories of permitted lottery, namely:

- **licensed lotteries:**
These are large society lotteries and lotteries run for the benefit of local authorities that are regulated by the Commission and require operating licences.
- **exempt lotteries:**
There are four types of exempt lottery that are expressly permitted under schedule 11 of the Act, including the small society lottery. The other types are discussed later in this section.

The Act also provides that the National Lottery is not to be regulated by the Commission, but continues to be regulated by the National Lottery Commission under the National Lottery etc. Act 1993.

Definition of lottery

In essence a lottery is an arrangement which satisfies all of the criteria contained within the statutory description of either a simple lottery or a complex lottery, under section 14 of the Act.

An arrangement is a simple lottery if:

- persons are required to pay to participate;
- 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;
- 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.

Definition of society

The Licensing Authority will define 'society' as the society, or any separate branch of such a society, on whose behalf a lottery is to be promoted. The authority needs to understand the purposes for which a society has been established in ensuring that it is a non-commercial organisation. Section 19 of the Act defines a society as such 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; and
- for any other non-commercial purpose other than that of private gain.

It is inherent in this definition that the society must have been established for one of the permitted purposes, and that the proceeds of any lottery must be devoted to those purposes. It is not permissible to establish a society whose sole purpose is to facilitate lotteries – it must have some other purpose.

Key changes from the Lotteries and Amusements Act 1976

Licensing authorities have been responsible for registering small society lotteries under the Lotteries and Amusements Act 1976. Under the Gambling Act 2005 the responsibility continues but there are, however, a number of differences between the regimes operating before and after 1 September 2007.

As defined by section 2 of the Charities Act 2006.

The Act introduces some relaxation of society lottery law and in particular:

- removes the individual limits on the percentage of proceeds that may be applied to expenses or prizes – although the maximum global amount that can be deducted for expenses and prizes remains at 80%, with a minimum of 20% going to the purposes of the society;
- allows rollovers of prize funds from one lottery to another promoted by the same society, provided the maximum single prize does not exceed £25,000 or 10% of the gross proceeds;
- permits the sale of tickets by an automated process;
- removes the £2 maximum limit on ticket prices.

Application and registration process for small society lotteries

Societies needing a registration to operate lotteries will need to approach their local Licensing Authority who will determine the society's qualification by reference to the Act's definition of a small society lottery, which falls into two distinct areas:

- society status – the society in question must be 'non-commercial'; and

- lottery size – the total value of tickets to be put on sale per single lottery must be £20,000 or less, or the aggregate value of tickets to be put on sale for all their lotteries in a calendar year must not exceed £250,000.

If the operator plans to exceed either of these values then they may need to be licensed with the Commission to operate large lotteries instead.

The Gambling Commission has published an advisory document entitled Lotteries and the Law which provides information for those seeking to run lotteries, and focuses specifically on large society lotteries and the operating licence regime operated by the Commission. Applicants in the first instance may wish to refer to it to enable them to establish which type of lottery they plan to operate. Copies are available from the Gambling Commission's website at www.gamblingcommission.gov.uk

The promoting society of a small society lottery must, throughout the period during which the lottery is promoted, be registered with a licensing authority. Parts four and five of schedule 11 of the Act set out the requirements on both societies and licensing authorities with respect to the registration of small society lotteries.

The Licensing Authority with which a small society lottery is required to register must be in the area where their principal office is located. If a licensing authority believes that a society's principal office is situated in another area, it will inform the society and the other authority as soon as possible.

Applications for small society lottery registrations must be in the form prescribed by the Secretary of State and be accompanied by both the required registration fee and all necessary documents required by the licensing authority to assess the application accordingly.

New applicants may be asked for a copy of their terms and conditions or their constitution to establish that they are a non-commercial society. Applicants may be requested to provide a declaration, stating that they represent a bona-fide non-commercial society.

The Licensing Authority will be required by paragraph 44 of schedule 11 of the Act to record details of the society on a register. This register will be available to the public on request.

Once the application for registration has been accepted and entered on the local register, the licensing authority will then notify both the applicant and the Commission of this registration as soon as practicable (again as required by paragraph 44 of schedule 11 of the Act).

Registrations run for an unlimited period, unless the registration is cancelled. If a licensing authority cancels the registration of a society they are required by paragraph 53 of schedule 11 of the Act to notify the Commission.

Refusal of an application

Paragraphs 47 and 48 of schedule 11 of the Act set out the grounds for licensing authorities to refuse a small society lottery registration application. In summary, licensing authorities may propose to refuse an application for any of the following reasons:

- An operating licence held by the applicant for registration has been revoked or an application for an operating licence made by the applicant for registration has been refused, within the past five years. The Commission will be able to advise the details of people and organisations that have been refused an operating licence or have had an operating licence revoked in the past five years. Licensing authorities should consult the Commission as part of their consideration process.
- The society in question cannot be deemed non-commercial. Under previous regimes, licensing authorities often required applicants to provide a statement with their application form declaring that they represented a bona-fide non-commercial society, and identifying how the purpose of the society could be established. The Commission believes that a similar approach remains appropriate. However, licensing authorities should also consider whether such a declaration is sufficient in the particular circumstances of each case or whether there are additional determining factors, such as an unusual or novel purpose of the society, which may suggest that further enquiry is needed.
- A person who will or may be connected with the promotion of the lottery has been convicted of a relevant offence. The Licensing Authority may require that applicants provide a statement alongside their application form declaring that they have no relevant convictions that would prevent them from running lotteries. The authority will then verify the accuracy of the statement with the police.
- Information provided in or with the application for registration is found to be false or misleading.

A licensing authority will only refuse an application for registration after the society has had the opportunity to make representations. These can be taken at a formal hearing or via correspondence. The Licensing Authority will inform the society of the reasons why it is minded to refuse registration and provide it with an outline of the evidence on which it has reached that preliminary conclusion – in order to enable representations to be made. Representations and objections that may result after such a decision will be handled in accordance with the procedures that the authority uses to handle representations relating to other licensing matters.

Revocation of a small society's registered status

The Licensing Authority may determine to revoke the registration of a society if it thinks that they would have had to, or would be entitled to, refuse an application for registration if it were being made at that time. Revocations will only take place after the society has been given an opportunity to make representations at a hearing or via correspondence. In preparation for this, the Authority will inform the society of the reasons why it is minded to revoke the registration and provide them with the terms of the evidence on which it has reached that preliminary conclusion. Representations that may result after such a decision will be handled in accordance with the procedures that the authority uses to handle representations relating to other licensing matters.

Appeals

Following the conclusion of any hearings and receipt of representations, paragraph 51 of schedule 11 of the Act then requires the authority to notify the applicant or the society as soon as possible if their registration is still to be revoked, or if their application for registration has still been rejected.

The applicant or society may decide to make an appeal against the decision, and has 21 days following receipt of the notice of the decision to lodge an appeal, which must be made directly to the local magistrates' court.

Relevant offences are listed at schedule 7 of the Act.

The magistrates' court may accordingly choose to affirm the decision of the licensing authority, reverse the decision, or make any other order.

Administration and returns

As the purpose of permitted lotteries is to raise money for non-commercial causes, the Act requires that a minimum proportion of the money raised by the lottery is channelled to the goals of the society that promoted the lottery. If a small society lottery does not comply with these limits it will be in breach of the Act's provisions, and consequently be liable for prosecution.

The limits placed on small society lotteries are as follows:

- at least 20% of the lottery proceeds must be applied to the purposes of the society (schedule 11, paragraph 33);
- no single prize may be worth more than £25,000 (schedule 11, paragraph 34);
- rollovers between lotteries are only permitted where every lottery affected is also a small society lottery promoted by the same society, and the maximum single prize is £25,000 (schedule 11, paragraph 35);
- every ticket in the lottery must cost the same and the society must take payment for the ticket fee before entry into the draw is allowed (schedule 11, paragraph 37).

Paragraph 39 of schedule 11 in the Act sets out the information that the promoting society of a small society lottery must send as returns to the licensing authority with which it is registered, following each lottery held. This information allows the Authority to assess, in particular, whether financial limits are being adhered to and to ensure that any money raised is being applied for the proper purpose. The information that must be submitted is as follows:

- the arrangements for the lottery – specifically the date on which tickets were available for sale or supply, the dates of any draw and the value of prizes, including any donated prizes and any rollover;
- the total proceeds of the lottery;
- the amounts deducted by the promoters of the lottery in providing prizes, including prizes in accordance with any rollovers;
- the amounts deducted by the promoters of the lottery in respect of costs incurred in organising the lottery;
- the amount applied to the purpose for which the promoting society is conducted (this must be at least 20% of the 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.

Paragraph 39 of schedule 11 in the Act also requires that returns must:

- be sent to the licensing authority no later than three months after the date of the lottery draw, or in the case of 'instant lotteries' (scratch cards) within three months of the last date on which tickets were on sale;
- be signed by two members of the society, who must be aged eighteen or older, are appointed for the purpose in writing by the society or, if it has one, its governing body, and accompanied by a copy of their letter or letters of appointment.

The Commission may inspect a society's returns, although it will not routinely do so. As such the Licensing Authority is required to retain returns for a minimum period of three years from the date of the lottery draw and these will be made available for inspection by the general public for a minimum period of 18 months following the date of the lottery draw. The Authority will ensure that information regarding the location of statements (i.e. on websites, in council offices etc), when they can be viewed, and the cost of obtaining copies, is made available to the public.

Where societies run more than one lottery in a calendar year, the Licensing Authority must monitor the cumulative totals of returns to ensure that societies do not breach the annual monetary limit of £250,000 on ticket values.

The Licensing Authority will notify the Commission if returns reveal that a society's lotteries have exceeded the values permissible for small society lotteries, and such notifications will be copied to the society in question. The Commission will contact the society to determine if they are going to apply for a lottery operator's licence, thereby enabling them to run large society lotteries lawfully, and will

inform the licensing authority of the outcome of its exchanges with the society. The Licensing Authority will also need to be aware of the status of external lottery managers, when monitoring returns. They are an individual, a firm or a company appointed by a society to manage a lottery or lotteries on behalf of the society, and are generally consultants that take their fees from the expenses of the lottery. A maximum of 80% of a lottery's proceeds may be attributed to expenses and prizes, and managers' fees must be included within this total.

External lottery managers' licence status

External lottery managers are required to hold a lottery operator's licence issued by the Commission to manage any lottery, including small society lotteries registered with a licensing authority.

However, individuals or firms can and do provide services to a society or local authority lottery without assuming the role of an external lottery manager. When determining whether a third party is a 'service provider' only, or has assumed the role of external lottery manager, the degree of management undertaken by both the promoter and the sub-contractor will be crucial factors. Key indicators will include:

- who decides how the lottery scheme will operate;
- who appoints and manages any sub-contractors;
- the banking arrangements for handling the proceeds of the lottery;
- who sells the tickets and pays the prizes; and
- who controls promotional aspects of the lottery.

Societies employing an unlicensed external lottery manager commit an offence, and they will need to satisfy themselves that any external lottery manager they employ holds a lottery operator's licence issued by the Commission. This can be achieved by consulting the publicly-accessible register of operating licences held on the Commission's website, at www.gamblingcommission.gov.uk.

Societies seeking further information on external lottery managers should refer to the Commission's website or its Lotteries and the Law booklet

Lottery tickets

Lotteries may involve the issuing of physical or virtual tickets to participants (a virtual ticket being non-physical, for example in the form of an email or text message). All tickets must state:

- the name of the promoting society;
- the price of the ticket (which must be the same for all tickets);
- the name and address of the member of the society who is designated as having responsibility at the society for promoting small lotteries, or (if there is one) the external lottery manager; and
- the date of the draw, or information which enables the date to be determined.

However, the requirement to provide this information can be satisfied by providing

an opportunity for the participant to retain the message electronically or print it.

The Licensing Authority requires all small society lottery operators to maintain written records of any unsold and returned tickets for a period of one year from the date of the lottery draw. The Authority is permitted to inspect the records of the lottery for any purpose related to the lottery.

The Act requires that lottery tickets may only be sold by persons over the age of 16 to persons over the age of 16.

With regards to where small society lottery tickets may be sold, the Commission recommends that licensing authorities should apply the following criteria to all small society lottery operators:

- tickets should not be sold in a street, where street includes any bridge, road, lane, footway, subway, square, court or passage (including passages through enclosed premises such as shopping malls);
- tickets may, however, be sold from a kiosk, in a shop or door to door.

This approach is consistent with the operating licence conditions imposed upon operators of large lotteries and local authority lotteries.

Prizes

Prizes awarded in small society lotteries can be either cash or non-monetary. The Licensing Authority will need to verify that the value of prizes declared on returns must not exceed the limits on prizes set out by the Act – i.e. that combined with any expenses incurred with the running of the lottery, such as managers' fees, they must not comprise more than 80% of the total proceeds of the lottery. Donated prizes will not be counted as part of this 80% (as no money will be withdrawn from the proceeds to cover their purchase) but should still be declared on the return following the lottery draw.

Enquiries should be made with the Licensing Authority or Sussex Police should any small society lottery operators wish to award items containing alcohol as prizes. This is in order to ensure that licensing law is not breached.

Compliance and enforcement of small society lotteries

Small society lotteries are intended to raise funds for 'good causes'. The Act gives licensing authorities a range of enforcement powers towards the lottery operators that they register. The Licensing Authority will pursue a risk-based approach towards their enforcement responsibilities for small society lotteries, targeting higher-risk lotteries which may require greater attention and operating a lighter touch in respect of lower-risk lotteries, so that resources are effectively concentrated on 'problem' lotteries.

In formulating its risk-based inspection programme, the Licensing Authority will consider a number of key factors in determining the risk status of small society lottery operators. The following criteria would be likely to affect the risk status of an operator:

- submission of late returns (returns must be submitted no later than three months after the date on which the lottery draw was held);
- submission of incomplete or incorrect returns;
- breaches of the limits for small society lotteries.

A list of the scenarios that would give reason to investigate the specific circumstances of a particular small society lottery, could include:

- making a late return of a statement following a lottery held;
- making no returns at all within a year of registration;
- failure to pay the annual fee as it becomes due;
- reports of sales of lottery tickets to persons under the age of sixteen;
- reports of sales of lottery tickets by persons under the age of sixteen;
- reports of societies running lotteries without holding registration;
- indications that the society has breached permissible limits;
- reports of misappropriation of funds.

Specific offences in relation to lotteries

The Act sets out a number of offences that apply to lotteries, as follows:

Section of the Act Offence

- s. 258 Promoting a non-exempt lottery without a licence
- s. 259 Facilitating a non-exempt lottery without a licence
- s. 260 Misusing the profits of a lottery
- s. 261 Misusing the profits of an exempt lottery
- s. 262 Purporting to operate a small society lottery when not registered, or failing to make the required, or making false or misleading, returns in respect of such lotteries
- s. 326 Without reasonable excuse, obstructing or failing to co-operate with an authorised person exercising his/her powers
- s. 342 Without reasonable excuse, giving false or misleading information to the Commission or a licensing authority

If a society running small lotteries fails to comply with any of the conditions of running such lotteries specified in part 4 of schedule 11 of the Act, it will be operating in an illegal manner, irrespective of whether it is registered with a licensing authority or not. Under these circumstances small society lottery operators may face prosecution by the Commission, a licensing authority, or the police. The lead organisation for initiating prosecutions will vary depending upon the specific circumstances of the case.

Participation in a lottery is a form of gambling, and as such licensing authorities are aware that the societies they register are required to conduct their lotteries in a socially responsible manner and in accordance with the Act.

As the minimum age for participation in a lottery is 16, societies are required to implement effective procedures to minimise the risk of lottery tickets being sold

to children, including procedures for:

- checking the age of potentially underage purchasers of lottery tickets;
- taking action where there are unlawful attempts to purchase tickets.

Societies may wish to refer to the Commission's Lotteries and the Law document for further information regarding social responsibility requirements for lottery operators.

Refer to website: www.crownoffice.gov.uk

Other exempt lotteries

Exempt lotteries are those permitted by the Act to be held without being licensed by the Commission. There are four types of exempt lottery, one of which is small society lotteries required to register with licensing authorities. This section details the characteristics of the other three types, which do not require either a Commission operating licence or registration with a licensing authority, and is included to assist in identifying when a particular class of lottery is eligible for registration as a small society lottery.

Incidental non-commercial lotteries

An incidental non-commercial lottery is one that is not promoted for private gain and is incidental to a non-commercial event. Examples may include a lottery held at a school fete, or at a social event such as a dinner dance. An event is deemed 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 be commercial if the profits were retained by the organiser.

For this type of lottery, part one of schedule 11 of the Act and regulations 34 specify the following:

- the promoters of the lottery may not deduct more than £500 from the proceeds in respect of the cost of prizes;
- the promoters of the lottery may not deduct more than £100 from the proceeds in respect of the cost of other expenses, such as the cost of printing tickets or hire of equipment;
- the lottery cannot involve a rollover of prizes from one lottery to another;
- tickets must only be sold at the premises during the event, and the result must be made public while the event takes place.

Private lotteries

There are three sub-categories of private lottery that qualify as exempt lotteries:

- Private society lottery – these can only be promoted by authorised members of a society, and tickets can only be sold to other members of that same society, or to persons on the society premises. 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. Examples of this type of lottery would include those limited to members of a working men's club or a sports club, where guests at the club would not be permitted to participate. The category B3A gaming machines offering lottery games permitted in members' clubs and miners' welfare institutes under regulations fall into this category. Use of these machines is limited to people over the age of 18.

- 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. An example of this type of lottery could be a sweepstake on the Grand National.
- Residents' lottery – the promoter of the lottery must reside on a single set of premises and tickets can only be sold to other residents of the same set of premises (the residency requirement can still be satisfied where the premises are not the sole premises in which a person resides). 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. An example of a residency meeting this definition is a student halls of residence.

It is a requirement of the Act 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, nor can such advertisements be sent to any other premises.

Rollovers are prohibited in private lotteries.

Private lotteries, including category B3A gaming machines offering lottery games, must comply with conditions set out in part two of schedule 11 of the Act, relating to the price and format of tickets. In summary these are:

- a ticket in a private society lottery may only be sold or supplied by the promoter or another person who is a member of the same society, in a works lottery by the promoter or another person employed on the same premises, or in the case of a residents' lottery by the promoter or another person who resides on the same premises;
- rights conferred by tickets are not transferable and this should be made clear on the lottery tickets;
- each ticket must state the name and address of the promoter or promoters of the lottery and the class of persons to whom the promoter(s) can sell or supply tickets;
- the price paid for each ticket in a private lottery must be the same, must be shown on tickets, and must be paid to the lottery promoter before any person is given a ticket.

Customer lotteries

Customer lotteries are run by the occupiers of business premises, who sell tickets only to customers present on their premises.

The Act requires the following as regards customer lotteries:

- A ticket in a customer lottery may only be sold or supplied by the promoter or by someone on their behalf.
- No advertisement may be displayed or distributed except on the business premises, or sent to any other premises.
- The lottery may thus only be advertised on the premises on which it is held.
- No ticket may result in the winner receiving a prize worth more than £50.
- No rollovers of prizes between lotteries are permitted.
- Each ticket must state:
 - the name and address of the promoter of the lottery;
 - the class of 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.
- Customer lotteries may not take place within seven days of another customer lottery promoted on the same business premises.

Free draws and prize competitions

Free draws are exempt from statutory control under the Act. The issue of people being required to pay to participate is a key defining characteristic of a lottery, and clarification can be found in the Act's definition of payment to enter (see schedule 2).

Prize 'skill' competitions meanwhile are distinguished from lotteries in that they depend, in part, on the exercise of skill, judgement or knowledge by participants. The characteristics that set apart skill competitions from lotteries can be found in section 14 of the Act which provides that genuine prize competitions must be reasonably likely to:

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

If these barriers to entry and success can be shown, the process will not be deemed to rely wholly upon chance and will, therefore, not be defined as a lottery. If there are concerns as to whether a competition may in fact be a lottery then in the first instance enquiries will be made to the Commission, which may ask the organisers to provide evidence of the number of people eliminated from participation.