

**Guidance to Licensing Authorities:
Small Society Lotteries**

Consultation document

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Guidance to Licensing Authorities

Consultation process

This document sets out the second part of the Gambling Commission's draft Guidance to Licensing Authorities, which gives guidance to authorities on the exercise of their functions in relation to the administration and conduct of lotteries under the Gambling Act 2005. It is issued in accordance with section 25 of the Act.

The Commission is committed to full and open consultation and would welcome comments on the draft guidance and partial RIA.

Please send your comments to consultation@gamblingcommission.gov.uk, or by post to:

Consultation Coordinator
Gambling Commission
Berkshire House
168-173 High Holborn
London WC1V 7AA

The consultation period will close on **27 JUNE 2006**.

Please see page 25 for further information on the consultation process.

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Section 1: Introduction

This draft guidance is issued for consultation in accordance with section 25 of the Gambling Act 2005.

The Act requires the Gambling Commission to issue guidance to licensing authorities on:

- the manner in which they are to exercise their functions under the Act; and
- the principles to be applied by them in exercising those functions.

Timing

The Gambling Act 2005 received Royal Assent in April 2005. Current expectations are that it will be brought fully into effect on 1 September 2007.

Consultation

This is the second document in a series of three that will form the Commission's guidance to licensing authorities:

- the *Guidance to Licensing Authorities* consultation document was published on 16 December 2005. It concentrated on matters that are primarily intended to assist licensing authorities on the development and preparation of local statements of premises licensing policy. This consultation is now closed;
- this document concentrates on licensing authorities' responsibilities in relation to small society lotteries; and
- a third document to be published in summer 2006 will concentrate on the compliance and enforcement responsibilities of licensing authorities.

Having taken account of responses to this consultation document, we expect to be in a position to publish a final version of this guidance by July 2006. That will provide time for licensing authorities to finalise their statements and to consult on them before they come into effect.

Status of this draft

This document sets out the key features of the new Act. Some of the detail relating to, for example, the process for the registration of small society lotteries, has to be laid down in secondary legislation. DCMS is responsible for bringing this secondary legislation before Parliament and it will consult local authorities and others on this in good time before the formal implementation of the Act.

The timing of this document is intended to enable licensing authorities to begin to put into place the administrative systems for the change to the lotteries regime.

Overall, the guidance will be kept under review. Revisions will be needed to take account of DCMS's forthcoming secondary legislation, and the Commission's further work on developing its working practices in relation to compliance and enforcement.

The development and evolution of the guidance is likely to continue beyond September 2007 when the Act comes fully into effect. The Commission will wish to ensure that it continues to meet best practice.

Questions for Consultation

We welcome any general questions or comments on the draft guidance, but in particular would ask respondents to comment on the following:

- Does the guidance cover all the issues that you would expect it to? If not, what other issues would you expect to see discussed?
- Does this guidance provide the right level of detail? If not, what are the particular areas on which you would welcome further guidance?
- Is the guidance arranged in a way that makes information easy to find? What improvements would you suggest?

Lotteries monetary limits proceeds review

The Gambling Commission has undertaken, separately from this document, a review of the current maximum price payable for each lottery ticket and of the maximum proceeds and prizes for lotteries. The Commission has presented the Secretary of State with its recommendations. The Government's decision is expected later this year.

Section 2: Background

Gambling Act 2005

2.1. The Gambling Act 2005 gives effect to the Government's proposals for reform of the law on gambling. The Act contains a new regulatory system to govern the provision of all gambling in Great Britain, other than the National Lottery and spread betting. It received Royal Assent on 7 April 2005. Further details on the Act's provisions are set out in the *Guidance to Licensing Authorities* consultation document¹.

2.2. In relation to lotteries:

- The Act repeals the Lotteries and Amusements Act 1976 (c.32).
- The Act has introduced a unified regulator for gambling in Great Britain, the Gambling Commission.
- It establishes a licensing regime for large non-commercial society and local authority lotteries, to be administered by the Gambling Commission, and a registration system for smaller non-commercial society lotteries, to be administered by licensing authorities (local authorities in England and Wales and Licensing Boards in Scotland).

2.3. 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 the two categories of permitted lotteries, that is:

- licensed lotteries; and
- exempt lotteries.

2.4. Licensed lotteries are large society lotteries and lotteries run for the benefit of local authorities which will be regulated by the Gambling Commission. Operating licences will be required.

2.5. Exempt lotteries are those that are expressly permitted under Schedule 11 of the Gambling Act. There are four types of exempt lotteries including those smaller society lotteries which will be registered with licensing authorities.

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

2.7. The Act contains three licensing objectives which underpin the functions that the Commission and licensing authorities will perform. These objectives are central to the new regulatory regime created by the Act. They 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; and
- protecting children and other vulnerable people from being harmed or exploited by gambling.

¹ Copies can be downloaded from the Commission's website's at <http://www.gamblingcommission.gov.uk/> and then visiting the consultation page.

2.8. Regulation of gambling to meet these objectives will be achieved through a variety of measures established under the Act. For lotteries, these include:

- the licensing and registration schemes mentioned above;
- conditions on licences imposed by the Gambling Commission;
- codes of practice from the Commission; and
- guidance from the Commission.

Guidance to licensing authorities

2.9. Section 25 of the Act requires the Commission to issue guidance on:

- the manner in which licensing authorities are to exercise their functions under the Act; and
- in particular, the principles to be applied by licensing authorities in exercising their functions under the Act.

2.10. Before issuing guidance to licensing authorities, the Act requires the Commission to consult:

- the Secretary of State;
- the Scottish Ministers;
- Commissioners for HM Revenue and Customs;
- representatives of licensing authorities;
- representatives of gambling businesses (including lottery operators); and
- persons with knowledge of social problems that may be associated with gambling.

2.11. Depending on the nature of the guidance, the Act also requires the Commission to consult, if it thinks appropriate, members of the public and representatives of Chief Constables of police forces. The Commission is consulting these groups and the National Lottery Commission on this document.

2.12. In exercising their functions generally under the Act, licensing authorities must have regard to the guidance issued by the Commission.

Licensing authorities

2.13. Section 2 of the Act provides that the following are licensing authorities for the purposes of the Act. Licensing authorities have largely the same definition as local authorities and for consistency the former term is used throughout this document even though they are referred to as local authorities in some parts of the Act (e.g. Schedule 11).

In relation to England:

- (i) a district council;
- (ii) a county council for a county in which there are no district councils;
- (iii) a London borough council;
- (iv) the Common Council of the City of London; and
- (v) the Council of the Isles of Scilly.

In relation to Wales

- (i) a county council, and
- (ii) a county borough council.

In relation to Scotland, a licensing board constituted under the Licensing (Scotland) Act 1976.

Functions of licensing authorities

2.14. The Act gives licensing authorities a number of important regulatory functions in relation to gambling. One of their functions is to register small society lotteries. Licensing authorities have an obligation to provide information to the Gambling Commission on the lotteries registered with them.

Status of this guidance

2.15. In carrying out its functions under the Act a licensing authority must have regard to this guidance. This general principle applies in relation to a number of the licensing authority's functions, including the registration of small society lotteries. "Must have regard to" does not mean that the licensing authority must always follow the guidance to the letter, but the expectation is that there should be strong and defensible reasons for departing from it.

2.16. In drafting this guidance, the Commission's intention is that, where appropriate, there should be consistency across licensing authorities about the manner in which functions under the Act are carried out. That is important in two respects:

- to meet the obligations on the Commission and on licensing authorities to pursue the licensing objectives, the Commission will be seeking to achieve a consistent standard of regulation and shared priorities; and
- in accordance with Government initiatives on minimising the impact of regulation on businesses and, in particular, the Hampton Review on regulation, it will be part of the Commission's role to ensure that operators receive sufficient advice to help them understand and comply with gambling regulation. Part of this will require the Commission to be satisfied that operators understand the licensing authorities' approach.

Section 3 – Definitions and legal status of lotteries under the Gambling Act 2005

3.1. A “Lottery” is an arrangement which satisfies the statutory description of either a simple lottery or a complex lottery in section 14 of the Act.

3.2. An arrangement is a simple lottery if:

- i. persons are required to pay to participate in the arrangement;
- ii. in the course of the arrangement one or more prizes are allocated to one or more members of a class; and
- iii. the prizes are allocated by a process which relies wholly on chance.

3.3. An arrangement is a complex lottery if:

- i. persons are required to pay to participate in the arrangement;
- ii. in the course of the arrangement one or more prizes are allocated to one or more members of a class;
- iii. the prizes are allocated by a series of processes; and
- iv. the first of those processes relies wholly on chance.

Thus if the first stage of a process involves a draw or other random method of determining those who move to the second stage, the process is a lottery regardless of the form of the second or subsequent stages. In contrast, if the first stage does not rely wholly on chance and passes the test of skill, judgement or knowledge in section 14(5), the process is not a lottery even if subsequent stages are determined by chance.

3.4. The Act also contains provisions setting out what is meant by payment for entry.

3.5. The Gambling Act 2005 states that a lottery is unlawful unless it is run in accordance with an operating licence issued by the Gambling Commission, is part of the National Lottery or is an exempt lottery. This section sets out the different categories of lottery and what regulation they require.

3.6. It should be noted that this document offers guidance to licensing authorities and those seeking to run lotteries will need to take their own legal advice on which definition they fit into.

Permitted lotteries

3.7. As mentioned earlier, there are two types of lottery permitted under the Act:

- Licensed lotteries; and
- Exempt lotteries.

Society and local authority lotteries

3.8. Societies may organise lotteries if they are either licensed by the Gambling Commission² or are in the exempt category because their proceeds are below specified levels, in which case they must register with their local licensing authority.

3.9. A “society” is the society or any separate branch of such a society, on whose behalf a lottery is to be promoted. The society must be non-commercial. A society is defined as non-commercial if it is established and conducted:

- i. for charitable purposes;
- ii. for the purpose of enabling participation in, or of supporting, sport, athletics or a cultural activity; or
- iii. for any other non-commercial purpose other than that of private gain.

3.10. 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.

3.11. If the total value of tickets a society puts on sale in any one lottery is to exceed £20,000 or tickets in separate lotteries in one calendar year are to exceed £250,000 in aggregate, the lottery is a large lottery, and the society must hold a lottery operator’s licence issued by the Gambling Commission.

3.12. Local authorities can run lotteries if licensed by the Gambling Commission. The local authority must use a minimum of 20% of the proceeds for a purpose for which they are permitted to expend public funds. They must also adhere to the other relevant provisions in the Act. Any local authority wishing to operate a lottery should refer to the Commission’s consultation paper on the proposed operating licence conditions and code of practices which was issued in March 2006.

3.13. The Gambling Act 2005 allows for some relaxation of lottery law in relation to society and local authority lotteries. In particular:

- It 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 the remaining 20% or more going to the purposes of the society or to local authority expenditure.
- It allows rollover of the prize fund from one lottery to another promoted by the same society or local authority.
- It allows the sale of tickets by an automated process.
- It removes the £2 maximum price for tickets.

²The Commission published a consultation document on the requirements for lottery operating licences in February 2006. This is available from the Commission’s website.

Exempt lotteries (other than small society lotteries)

3.14. Exempt lotteries do not require a licence from the Gambling Commission. There are essentially four types of exempt lottery, of which a small society lottery is one. Further details on exempt lotteries (other than small society lotteries) are included at section G of this document. In summary the other types of exempt lottery are:

- i. Incidental non-commercial lotteries – these are lotteries that are promoted wholly for purposes other than private gain, and which are incidental to non-commercial events (commonly charity fund raising events).
- ii. Private lotteries, which may be:
 - private society lotteries – tickets may only be sold to members of the society, or persons who are on the premises of the society;
 - work lotteries – the promoters and purchasers of tickets must all work on a single set of work premises;
 - residents' lotteries – promoted by, and tickets may only be sold to, people who live at the same set of premises; or
 - customer lotteries – promoted by the occupier of business premises and tickets may only be sold to customers who are on the business premises.

Section 4: Registration of small society lotteries by licensing authorities

Small society lottery definition

4.1. A small society lottery is a lottery promoted on behalf of a non-commercial society as defined in s. 19 of the Act, which satisfies the financial requirements set out in paragraph 31 of Schedule 11.

4.2. 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; or
- for any other non-commercial purpose other than that of private gain.

4.3. A lottery is small if the total value of tickets put on sale in a single lottery is £20,000 or less and the aggregate value of the tickets put on sale in a calendar year is £250,000 or less. Where tickets for a single lottery exceed £20,000 or the aggregate value of tickets in a year exceeds £250,000 a lottery is a large society lottery and a licence will be required from the Gambling Commission.

Application and registration

4.4. The promoting society of a small society lottery must, throughout the period during which the lottery is promoted, be registered with a local authority in England and Wales or licensing board in Scotland. Parts 4 and 5 of Schedule 11 of the Act set out the requirements on societies and licensing authorities with respect to registration of small society lotteries.

4.5. The society will be required to be registered with their local authority in the area where their principal office is located. The Commission recommends that 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.

4.6. The application must be in the form that is prescribed by the Secretary of State and be accompanied by the prescribed fee and the documents the licensing authority will need to assess the application. DCMS will be consulting on the application form and fees payable in due course.

4.7. The licensing authority must record details of the society and keep the details on a register. While the register does not have to be a public register, the Commission recommends that licensing authorities make the register available to the public on request.

4.8. As soon as the entry on the register is completed the licensing authority must notify the applicant of his registration and inform the Commission of the registration.

4.9. The Commission will make available on its website a dedicated webpage for the entry of registrations of small society lotteries. This will ensure that information can be transferred to the Commission quickly and accurately.

Refusals

4.10. The Act sets out the grounds for refusal of registration in paragraphs 47 and 48 of schedule 11. Paragraph 47 states that licensing authorities shall refuse applications for registration if in the previous five years either 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.

4.11. The Gambling Commission website will maintain details of those people who hold a lottery operating licence. We are considering whether we can include the details of those people who have had an operating licence revoked. A consultation paper containing options on how the Gambling Commission will handle and advertise sanctions will be issued in Spring 2006.

4.12. Should the licensing authority be concerned that an applicant for registration may have been refused an application for an operating licence, the Gambling Commission will be able to advise if this is the case.

4.13. Paragraph 48 of schedule 11 states that a licensing authority may refuse an application for registration if they think that:

- the applicant is not a non-commercial society,
- a person who will or may be connected with the promotion of the lottery has been convicted of a relevant offence, or
- information provided in or with the application for registration is false or misleading.

4.14. Licensing authorities will want to ask applicants to set out the purposes for which the society is established. Under previous regimes licensing authorities often required applicants for registration to declare that they represented a bona fide non-commercial society and had no relevant convictions. The Commission believes that a similar declaration will remain appropriate in future. The licensing authority will wish to consider, however, whether such a declaration is sufficient in the particular circumstances of each case or whether there are factors (for instance an unusual or novel purpose of the society) which suggest that further enquiry is needed.

4.15. A licensing authority may only refuse an application to join the register after the society has had the opportunity to make representations. Licensing authorities should inform the society of the reasons why it is minded to refuse registration and the evidence on which it has reached that preliminary conclusion. Licensing authorities may choose how to handle representations but should, as a matter of good practice, set out, for instance on its website, the procedures it will follow. The Gambling Commission is considering whether it can usefully provide any further guidance.

Revocations

4.16. A licensing authority may revoke the registered status 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. No revocations can take place unless the society has

had an opportunity to make representations. Again, in preparation for this, licensing authorities should inform the society of the reasons why it is minded to revoke the registration and provide at least an outline of the evidence on which it has reached that preliminary conclusion. The Gambling Commission will be providing guidance to licensing authorities on their compliance and enforcement responsibilities. A draft will be issued in the summer.

Appeals

4.17. Paragraph 51 of schedule 11 sets out the processes for appeals against refusal or revocation of registration of small society lotteries. The applicant or registered society may appeal if the licensing authority has rejected an application for registration or revoked the registration.

4.18. The appeal, which must be made within 21 days of receipt of a notice of the decision, must be made to the local magistrates' court or sheriff's court in Scotland.

4.19. On an appeal the magistrates' court or sheriff's court may take the following action: affirm the decision of the licensing authority, reverse the decision or make any other order (which may include a transitional provision).

Section 5: Administration and returns

5.1. The Gambling Commission will be producing information for non-commercial societies on the administration of small society lotteries. This will be available on the Gambling Commission website www.gamblingcommission.gov.uk. Licensing authorities may find it helpful to look at this to see what is recommended to societies by the Commission and may wish to refer applicants to it.

Lottery requirements

5.2. The purpose of permitted lotteries is to raise money for causes that are non-commercial and therefore 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 breaches these limits it will be in breach of the Act and will be liable to prosecution.

5.3. The limits placed on small society lotteries are as follows:

- A small society lottery must apply at least 20% of the proceeds of the lottery to the purposes of the society.
- The current limits mean that no single prize in a small society lottery may be worth more than £25,000.
- Rollovers 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.
- Every ticket in the lottery must cost the same and the fee must be paid to the society before entry into the draw is allowed.

Returns

5.4. Paragraph 39 of Schedule 11 to the Act sets out the information that the promoting society of a small society lottery must send to the local authority with which they are registered. This information will allow local authorities to assess, in particular, whether the financial limits are being adhered to and to ensure that any money raised is applied for the proper purpose. The information that must be submitted is as follows:

- i. the arrangements for the lottery (including the date on which tickets were available for sale or supply, the dates of any draw and the value of prizes, including any rollover);
- ii. the proceeds of the lottery;
- iii. the amounts deducted by the promoters of the lottery in providing prizes, including prizes in accordance with any rollovers;
- iv. the amounts deducted by the promoters of the lottery in respect of costs incurred in organising the lottery;
- v. any amount applied to a purpose for which the promoting society is conducted (at least 20% of the proceeds); and
- vi. 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.

5.5. The return must:

- i. be sent to the licensing authority no later than three months after the date of the draw (or the last draw) in the lottery; and
- ii. 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.

5.6. The licensing authority must make available for inspection by the public (and provide copies if requested) the statements submitted by societies under paragraph 39 in the preceding 18 months.

5.7. A licensing authority may receive numerous returns from some societies and they should ensure that the cumulative totals for each society are monitored so that they do not breach the annual monetary limit.

5.8. If after receiving a return, the licensing authority thinks that the ticket sales are shown to be above the limits for a small society lottery, the licensing authority must notify the Gambling Commission in writing and should copy the notification to the society. The Commission will then contact the lottery to determine if they are going to apply for a lottery operators licence which will enable them to run large society lotteries lawfully. The Commission will inform the licensing authority of the outcome of its exchanges with the society.

5.9. The Secretary of State may specify the form in which the return may be submitted but licensing authorities should allow for manual as well as electronic returns. It is recommended by the Commission that details of the form of return should be published on the licensing authority's website and in other appropriate media e.g. leaflet form.

Small societies using an external lottery manager

5.10. External lottery managers are an individual, firm or company appointed by the society to manage a lottery or lotteries on behalf of the society. They are consultants and generally take their fees from the expenses of the lottery.

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

5.12. Societies which employ an unlicensed external lottery manager commit an offence. Societies will thus need to satisfy themselves that any external lottery manager they employ holds an operator's licence issued by the Commission. This can be achieved by looking at the register of licences held on the Gambling Commission website. Licensing authorities should advise societies planning to use or using an external lottery manager that they should do this and may wish to verify that it has been done.

Tickets

5.13. Lotteries may involve the issuing of physical or virtual tickets to participants. As required by Schedule 11 of the Act, all tickets must:

- identify the promoting society;
- state the price of the ticket, which must be the same for all tickets;
- state the name and address of the member of the society who is designated as having responsibility at the society for the promotion of the lottery, or, if there is one, the external lottery manager; and
- state the date of the draw, or enable the date of the draw to be determined.

5.14. “Ticketless” or electronic lotteries must allow the participant to retain the message electronically, or print it.

5.15. The Commission recommends that operators maintain written records of unsold and returned tickets for a period of one year. The licensing authority is permitted to inspect the records of the lottery for any purpose related to the lottery.

Section 6: Compliance and enforcement of small society lotteries (rules)

6.1. Small society lotteries are intended to raise funds for 'good causes'. The Act gives licensing authorities a range of powers to inspect lotteries and to ensure compliance with the Act and enforcement powers should the Act be breached.

6.2. Licensing authorities are recommended to follow the Better Regulation and Hampton principles. These are primarily relevant to compliance and enforcement functions (on which Commission guidance will follow later in 2006) but the Better Regulation principles in particular have a read-across to licensing functions. These are that regulators should be:

- proportionate: regulators should only intervene when necessary: remedies should be appropriate to the risk posed, and costs identified and minimised;
- accountable: regulators must be able to justify decisions, and be subject to public scrutiny;
- consistent: rules and standards must be joined up and implemented fairly;
- transparent: regulators should be open, and keep regulations simple and user friendly; and
- targeted: regulation should be focused on the problem, and minimise side effects.

6.3. The Regulatory Compliance Code is currently being re-drafted for England and Wales by a Local Authority Better Regulation Group (LABREG) chaired by the Better Regulation Executive. It is also intended that the Code will be rewritten to cover Scotland.

6.4. The Commission will be consulting on further guidance on licensing authorities' compliance and enforcement responsibilities during 2006, after further discussions between the Commission, the police, licensing authorities and other law-enforcement agencies to map out respective roles, including the prosecution of lotteries which are in breach of the Act. Subject to the content of that further guidance, it is recommended that licensing authorities adopt a risk-based inspection programme. This would include targeting high-risk lotteries which require greater attention, whilst operating a lighter touch in respect of low-risk lotteries, so that resources are effectively concentrated on problem lotteries. Each licensing authority's policy statement should set out the principles to be applied by the authority in respect of such a programme and the criteria the authority is likely to use to determine the level of risk.

6.5. Licensing authorities may wish to consider drawing up guidance for organisations seeking to operate a small society lottery. This could include:

- i. the forms and documentation needed for registration (the Secretary of State will prescribe the forms and documentation necessary for small society lotteries);
- ii. the information that societies will need to keep concerning the management and operation of the lottery (to enable it to meet the requirements of paragraph 39 of Schedule 11);
- iii. the forms and documentation needed for the returns following a lottery draw;
- iv. details of fees due and when they should be paid (the Secretary of State will set out the fee structure in regulations);

- v. criteria and evidence that the authority will use when determining whether to register a society; and
- vi. criteria and evidence that the authority will use when determining whether to revoke a registration.

6.6. Licensing authorities may wish to publish any such guidance on their website and in other suitable media.

Specific offences in relation to lotteries

6.7. The Act sets out a number of offences in relation to small society lotteries:

Section	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.

Enforcement powers of licensing authorities

6.8. Even where a society registers with a licensing authority, if it fails to comply with any of the other conditions of a small society lottery laid down in Part 4 of Schedule 11 it will be operating in an illegal manner. Under these circumstances the society may be prosecuted by the Commission, the police or the licensing authority.

6.9. Further details on who should lead on the prosecutions of illegal gambling will be set out in the third part of the Commission's Guidance to Licensing Authorities, which will be published for consultation in the summer of 2006. That guidance will look at how the Commission and licensing authorities manage information exchange and evidence gathering.

6.10. If the licensing authority suspects that there has been an offence committed under the Act they should investigate the circumstances of the lottery. Reasons for an inspection may include:

- i. making a late return of a statement or making no returns within a year of registration;
- ii. failure to pay fees as they become due;
- iii. reports of sales of lottery tickets to children;
- iv. reports of society lotteries being held without registration;
- v. indications that the society has breached the lottery limits; and
- vi. reports of misappropriation of funds.

6.11. Licensing Authorities are not able to institute criminal proceedings in Scotland. They should refer cases where there has been a breach of the Act there to the Procurator Fiscal.

Section 7: Other exempt lotteries

7.1. Exempt lotteries are those specified in the Gambling Act 2005 as permitted to be run without a licence from the Gambling Commission. There are four types of exempt lotteries, of which small society lotteries required to register with licensing authorities are one. This section is intended to provide information to licensing authorities on the characteristics of the other three types of exempt lotteries to enable them to establish the difference between the various types of lottery and thus when a lottery requires registration as a small society lottery.

7.2. There are three types of exempt lottery, in addition to small society lotteries: incidental non-commercial lotteries, private lotteries and customer lotteries.

Incidental non-commercial lotteries

7.3. An incidental non-commercial lottery is one that is not promoted for private gain and which 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 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.

7.4. The Gambling Act 2005 specifies that:

- i. The promoters of the lottery may not deduct more than the amount prescribed by the Secretary of State from the proceeds in respect of the cost of prizes or expenses, such as the cost of printing tickets, hire of equipment, irrespective of the actual cost. The Secretary of State will set this figure through regulations and will consult in good time before formal implementation of the Act.
- ii. The lottery cannot involve a rollover of prizes from one lottery to another.
- iii. Tickets must be sold at the premises during the event, and the result made public while the event takes place.

Private lotteries

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

- i. Private society lottery – these can only be promoted by authorised members of the 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.
- ii. 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.

- iii. 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 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.

7.6. 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 sent to any other premises.

7.7. Rollovers are prohibited in private lotteries.

7.8. Private lotteries must comply with conditions set out in schedule 11 of the Act relating to the price and format of tickets. In summary these are:

- i. 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.
- ii. Rights conferred by tickets are not transferable and this should be made clear on the lottery tickets.
- iii. 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.
- iv. 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.

7.9. Private lotteries may not be conducted on vessels. The definition of a vessel (in section 353(1) of the Act) is:

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

Customer lotteries

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

7.11. The Act requires that in customer lotteries

- i. Tickets for the lottery can only be sold to a person on the business premises as a customer of the promoter.
- ii. The lottery must be arranged to ensure that no profit is made; therefore the proceeds can only be used for reasonable expenses and the provision of prizes.
- iii. A ticket in a customer lottery may only be sold or supplied by the promoter or by someone on their behalf.
- iv. No advertisement may be –
 - displayed or distributed except on the business premises;
 - sent to any other premises;
 - the lottery may thus only be advertised on the premises on which it is held.
- v. No ticket may result in the winner receiving a prize worth more than £50.
- vi. No rollovers of prizes are permitted.
- vii. 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.
- viii. Customer lotteries may not take place within seven days of another customer lottery promoted on the same business premises.

7.10. Customer lotteries may not be conducted on vessels. For the definition of a vessel see paragraph 7.9 above.

The consultation process: how to contribute

Feedback on this Guidance to Licensing Authorities consultation document and on the Regulatory Impact Assessment which accompanies it should reach the Gambling Commission no later than **27 JUNE 2006**.

Please indicate clearly the paragraph numbers your response refers to. A response form in MS Word is available from the Consultation section of the Gambling Commission website at www.gamblingcommission.gov.uk.

We would prefer to receive responses by email. Please send them to consultation@gamblingcommission.gov.uk.

If you would prefer to post your comments, please send them to:

Consultation Coordinator
Gambling Commission
Berkshire House
168-173 High Holborn
London WC1V 7AA

When responding, please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of an organisation, please make it clear who that organisation represents. If responding as an individual, please mention your own interest.

Please note responses may be made public or published in a summary of responses to the consultation unless you state clearly that you wish your response or name to be treated confidentially. Confidential responses will be included in any statistical summary of comments received. If you are replying by e-mail, unless you specifically include a request to the contrary in the main text of your submission to us, we will assume your consent overrides any confidentiality disclaimer that is generated by your organisation's IT system.

Further information and copies of the consultation document are available from the Consultation Coordinator at the address above, or:

Consultation Coordinator
T 020 7306 6219
E consultation@gamblingcommission.gov.uk

Following the end of the consultation, we will publish a summary of responses on the Gambling Commission website. Our current intention is to issue the final version of the guidance to licensing authorities by 1 SEPTEMBER 2006.

This consultation is being carried out in accordance with the Cabinet Office Code of Practice on Consultation. The criteria are listed on the Commission's website, together with details of who to contact with any comments on the consultation procedure or complaints about the way it is being conducted. The complete code is available on the Cabinet Office website:

www.cabinet-office.gov.uk/regulation/consultation

The Gambling Commission regulates gambling in the public interest.

It does so by keeping crime out of gambling, by ensuring that gambling is conducted fairly and openly, and by protecting children and vulnerable people. The Commission also provides independent advice to government on gambling in Britain.

For further information or to register your interest in the Commission, please visit its website at www.gamblingcommission.gov.uk

Copies of this document are available in alternative formats on request.

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