

Consultation by the Gaming Board of Great Britain on Guidance to Licensing Authorities: Small Society Lotteries

RESPONSE FROM THE NATIONAL LOTTERY COMMISSION

1. Introduction

- 1.1 The National Lottery Commission (NLC) is the regulator of the National Lottery and has a responsibility to exercise its functions in the manner most likely to secure:
- that the National Lottery is run, and every lottery that forms a part of it is promoted, with all due propriety, and
 - that the interests of every participant in a lottery that forms part of the National Lottery are protected, and
 - subject to the two duties above, to do our best to secure that the net proceeds of the National Lottery are as great as possible.
- 1.2 It is the view of the NLC that society lotteries and the National Lottery have equally valid roles to fulfil and are meant to thrive for the benefit of the good causes they serve, but are not intended to directly compete with each other.

2. Background

- 2.1 A small lottery is one where the total value of tickets put on sale in any one lottery is less than £20,000, and tickets in separate lotteries in one calendar year are less than £250,000 in total. Small lotteries are to be registered with the relevant licensing authority (for example, a district council in England) where their principal office is located. The authority then has an obligation to provide information to the Gambling Commission on the lotteries registered with them.
- 2.2 If the total value of tickets in one lottery exceeds £20,000 or if the aggregate across the calendar year is more than £250,000, then the lottery is a large lottery and will require a licence issued by the Gambling Commission.
- 2.3 We are broadly in support of the approach outlined in the consultation document, but would welcome clarification in the following areas:
- Complex lotteries
 - Identifying prize competitions that are illegal lotteries
 - Rollovers
 - Monitoring returns
 - Reporting information

3. Complex lotteries (section 3.3)

A complex lottery is one that allows prizes to be allocated by a series of processes, the first of which must rely wholly on chance. We do not expect this area of the Act to be brought into force until September 2007.

A complex lottery is a provision brought in by the Gambling Act. Exactly how it will be applied by small lotteries and how compliance with the definition will be ensured is a matter which may require further consideration and guidance from the Gambling Commission.

4. Identifying prize competitions that are illegal lotteries (section 3.5, 6.4 and 6.9)

Policing the boundary between legal and illegal lotteries has been raised before by a number of parties as an area of concern. As highlighted in the Budd Report in 2002, there are lotteries masquerading as prize competitions that may be regarded as illegal. However, we are not aware that any direct enforcement action is being taken against such lotteries.

The Gambling Act provided a way forward in the requirement for prize competitions under Section 14 (5) that they require the exercise of skill and judgement, or knowledge that is reasonably likely to:

- (a) prevent a significant proportion of people who wish to participate from doing so: or
- (b) prevent a significant proportion of people who participate from receiving a prize.

The explanatory notes to the Gambling Act clarify further in paragraph 73 that: “The test ... is intended to be a practical one” and needs to be “suitably challenging” for those likely to see the call to enter. For example, the level of skill would be adjusted for a children’s competition, or to reflect the knowledge level of readers of a specialist magazine. The explanatory notes go on to say that: “The requirements ... are not, therefore, necessarily satisfied by requiring a level of skill or judgement that could be expected to challenge the public at large.”

We would welcome clarification by the Gambling Commission on what is meant by a “significant proportion” and the rationale for the level being chosen.

Although we recognise that there are implications in terms of resources and legal services to prosecute a case, we look forward to the Gambling Commission setting out its approach to enforcement in this area after the relevant consultation that is due to begin in summer 2006. We are also unaware of any major educational initiatives in this area to advise prize competition organisers of where they may transgress lottery boundaries, as prevention may provide a cost-effective support to enforcement activities. We would welcome clarification from the Commission.

5. Rollovers (section 3.13)

The Gambling Act 2005 allows the rollover of the prize fund from one lottery to another promoted by the same society or local authority, as long as the maximum single prize is £25,000¹. Given that aggregate sales of more than £250,000 in one year would qualify the lottery as a large lottery, and hence subject to regulation by the Gambling Commission, we have no issue with this feature, other than the monitoring raised in the point below.

¹ However, Rollovers remain prohibited in private and customer lotteries.

6. Monitoring returns (section 5.7 & 5.8)

It seems a sensible requirement that the licensing authority must ensure that the cumulative totals for each society are monitored so that they do not breach the annual monetary limit. It would also seem reasonable that there would be a process to check that such monitoring of cumulative totals is carried out – would this be done by the authority's own internal audit, or does the Gambling Commission envisage some assurance activity of its own?

7. Access to reporting information (sections 5.4 – 5.9)

We understand that the Department for Culture, Media and Sport is currently consulting on the application form for use by the licensing authorities, and that the authority will then have to record details of the society and keep the details on a register. While the Act does not require the register to be made public, the Commission recommends that licensing authorities make the register available to the public on request. The Gambling Commission website will maintain details of those people who hold a lottery operating licence. We believe these measures are commendable in the interests of transparency.

Given our interest in understanding the gambling sector and lotteries in particular, we can see considerable benefits in having some top-level indicators available on small society lotteries. The Gambling Commission should be able to know the number of total number of small society lotteries from the registers maintained by the licensing authorities, and can combine these with the totals for larger lotteries registered with the Gambling Commission to see the number of lotteries in operation. We would find such information extremely helpful for tracking trends in the market and in contributing to evidence-based policy.

In addition, the NLC would find it very valuable to know the total spend on small lotteries each year. Combined with figures produced by the Gambling Commission for larger lotteries and by the NLC for the National Lottery, we could then have a top-level view of the total lottery market in the UK. This would be a useful "context setting" indicator that would be of general interest, not least to the regulators and DCMS and other groups interested in the impact of the Gambling Act.

We imagine that obtaining the figure for total spend on small society lotteries would require an annual return to the Gambling Commission from each local authority, of which there will be hundreds. This could be obtained with an annual return from the licensing authority to the Gambling Commission and, given the number of parties involved in the task, would require thorough planning and is likely to be a longer-term development.

**National Lottery Commission
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