

Gambling Act 2005

Guidance notes for societies promoting lotteries



INTRODUCTION

These notes are intended to assist societies and their officers in connection with the registration and conduct of lotteries. They should be read in conjunction with the legislation. The Gambling Act 2005 can be viewed on www.opsi.gov.uk/acts/acts2005. Further information is also available on the Gambling Commission website www.gamblingcommission.gov.uk and the Department of Culture, Media and Sport website www.culture.gov.uk. If you are in any doubt, you should see your solicitor.

The Gambling Act 2005 creates two broad categories of lottery:

- Large society lotteries and lotteries run for the benefit of local authorities which will be licensed by the Gambling Commission, and
- Exempt lotteries, including small society lotteries which will be registered with licensing authorities (local authorities).

What are the objectives of the Gambling Act?

The Licensing Objectives are set out in section 1 of the Act. These are:

- Preventing gambling from being a source of crime and 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.

What is the status of lotteries under the Gambling Act?

In relation to the regulation of lotteries, the Act:

- Repeals the Lotteries and Amusements Act 1976.
- Establishes a licensing regime for large non-commercial society and local authority lotteries, administered by the Gambling Commission.
- Continues a registration system for small non-commercial society lotteries, to be administered by licensing authorities.

Are there many changes between the Gambling Act 2005 and the old Lotteries and Amusements Act 1976?

- The Maximum amount that can be deducted for expenses and prizes remains at 80% and a minimum of 20% of the lottery proceeds must be applied to the purposes of the society or to local authority expenditure (in the case of a local authority lottery).
- Rollovers of prize funds from one lottery to another promoted by the same society are allowed provided that the maximum single prize does not exceed £25,000 or 10% of the gross proceeds.
- The sale of tickets by an automated process is permitted.
- The £2 maximum limit on ticket prices is removed.

Promoting or facilitating a lottery is a criminal offence, unless the lottery 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 Gambling Commission and require operating licences; and
- **Exempt lotteries:** There are 4 types of exempt lottery that are expressly permitted under Schedule 11 of the Gambling Act. **These include small society lotteries.**

What is a lottery?

A lottery is an arrangement which satisfies all the criteria contained in the statutory description of *either* a simple lottery or a complex lottery.

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.

What is a society lottery?

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 (as defined in section 2 of the Charities Act 2006);
- For the purpose of enabling participation in, or supporting, sport, athletics or a cultural activity, or
- For any other non-commercial purpose other than that of private gain.

The society must have been established for one of the permitted purposes, and 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.

SMALL SOCIETY LOTTERIES

Small Society Lotteries do not require a licence from the Gambling Commission but the promoting society must register with the local authority where the society's principal office is situated.

What is a Small Society Lottery?

The definition of a small society lottery 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.

What happens if the operator plans to be commercial or to exceed the small lottery values?

The operator may need to be licensed with the Gambling Commission instead of the local authority.

The Gambling Commission has published an advisory document entitled

Lotteries and the Law. Copies are available on their website

www.gamblingcommission.gov.uk. The document provides information for those seeking to run lotteries and focuses specifically on large society lotteries. Applicants may wish to view this document in order to establish which type of lottery they plan to operate.

Are there any exemptions to the requirement to register?

It is possible to promote a lottery without requiring registration but only for certain types of exempt lottery and only when the necessary criteria are met (see below). In most cases registration will be required.

For what purposes can a Society Lottery be promoted?

The purpose of society lotteries must be to raise money for non-commercial causes. The Gambling Act sets out the minimum proportion of the money raised by the lottery that must be channelled to the goals of the society that promoted the lottery.

What limits are placed on small society lotteries?

The limits placed on small society lotteries are as follows;

- The arrangements for a Small Society Lottery must ensure that at least 20% of the proceeds of the lottery are applied to a purpose for which the society is conducted. (Gambling Act 2005 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); and
- 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).

If a society that has registered to operate a small society lottery does not comply with these limits it will be in breach of the provisions of the Gambling Act 2005 and consequently be liable for prosecution.

What is the application and registration process for Small Society Lotteries?

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 4 and 5 of Schedule 11 to the Gambling Act 2005 set out the requirements on both societies and licensing authorities. The Act can be viewed on the Government website www.opsi.gov.uk

You are required to register with the licensing authority for the area where the principal office of the society is located. Cambridge City Council will therefore be the licensing authority for applications within the City boundary.

Forms and documentation needed for registration are prescribed by Government Regulations and are available to be downloaded from our website:

<http://www.cambridge.gov.uk/ccm/content/ehws/licensing/registration-of-small-society-lotteries.en>

Hard copies can also be made available upon request. If you require hard copy forms please contact the Licensing Team email: licensing@cambridge.gov.uk

The registration fee and all necessary documents required to assess the application must accompany applications, for example a copy of the society terms and conditions or constitution, establishing that the society is non-commercial or a declaration by the applicant stating that they represent a bona-fide non-commercial society.

Cambridge City Council will record details of the society on a register and will notify the Gambling Commission once the application for registration has been accepted. The register may be made available to the public on request.

Provided that the appropriate fees are paid, registrations will run for an unlimited period, unless the registration is cancelled.

What are the fees and when must they be paid?

The registration application fee of £40 and the annual fee of £20 are prescribed by Government. The application fee must be submitted with the initial application and the annual fee must be paid before the expiry of the current 12 month registration. Cheques should be made payable to Cambridge City Council. Cambridge City Council will send out a reminder three months before the expiry of the current registration.

Renewals

If you wish to maintain your registration, you should ensure that you submit your application to renew and prescribed fee before the current registration expires.

If you do not complete the renewal form, you will not be licensed to run small society lotteries after your current registration expires and if you do so, you will be breaking the law.

When can the licensing authority refuse an application to register a small society lottery?

The licensing authority may refuse an application for any of the following reasons:

- An operating licence held by an applicant for registration has been revoked or an application for an operating licence made by the applicant has been refused, within the past five years.
- The society in question cannot be deemed non-commercial.
- A person who will or may be connected with the promotion of the lottery has been convicted of a relevant offence (listed in Schedule 7 of the Act).
- Information provided in or with the application for registration is found to be false or misleading.

The licensing authority will only refuse an application after the society has had the opportunity to make representations against refusal. Where representations are received these will be considered at a meeting of the Licensing Committee. We will inform the society of the reasons why we are minded to refuse registration and will provide it with details of the evidence on which we have reached that preliminary conclusion so that the society can make any representation that it sees fit.

In what circumstances can a licence be revoked?

The licensing authority may revoke a licence if they think that they would have had to, or would be entitled to, refuse an application for registration if it were being made at that time. Revocation will not take place unless the society has been given the opportunity to make representations to the Licensing Committee.

Is there an appeals procedure?

Following the conclusion of any hearing, the applicant will be informed of the decision in writing. The applicant or society may appeal the decision and if they decide to do so must lodge an appeal directly with the Cambridge Magistrates Court within 21 days of receipt of the notice of decision.

What information must societies send to the licensing authority after a lottery draw?

Paragraph 39 of Schedule 11 of 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 authorities to assess whether financial limits are being adhered to and to ensure that any money raised is being applied for the proper purpose. The information which 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 arrangements for prizes (including 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 other costs incurred in organising the lottery.
- The amount to be 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.

The Act also requires that returns must:

- Be sent to the licensing authority no later than 3 months after the date of the lottery draw, or in the case of 'instant lotteries' (scratch cards) within 3 months of the last date on which tickets were on sale; and
- Be signed (electronic signatures are acceptable if the return is sent electronically) by 2 members of the society, who must be aged 18 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.

Cambridge City Council is required to retain these returns for 3 years from the date of the lottery draw and to make them available for inspection by the Gambling Commission or the general public for a minimum period of 18 months from the date of the lottery draw.

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

What happens if the returns reveal that a society's lotteries have exceeded the values permissible for small society lotteries?

The licensing authority must advise the Gambling Commission. Such a notification will be copied to the society in question and the Gambling Commission will contact the society regarding an application for a lottery operator's licence.

Are there any requirements for the tickets the society wishes to sell or supply?

Yes.

Lotteries may involve the issuing of physical or virtual tickets to participants (examples of a virtual ticket would be tickets sent by email or text)

The purchaser of a small society lottery ticket must receive a document that identifies:

- 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.

In the case of virtual tickets, the requirement to provide this information can be satisfied by providing an opportunity for the participant to retain the message electronically or print it.

Operators should maintain written records of any unsold and returned tickets for a period of one year from the date of the lottery draw. The licensing authority is permitted to inspect the records of the lottery for any purpose related to the lottery.

Other requirements relating to the sale of tickets are that:

- They may only be sold by persons aged 16 and over.
- They may only be sold to persons aged 16 and over.
- They should not be sold to any person in a street, (street includes any bridge, road, lane, footway, subway, square, court or passage, including passages through enclosed premises such as shopping malls), however, tickets may be sold from a kiosk, in a shop or door to door.

What are the requirements concerning prizes?

Prizes awarded in a small society lottery can be either cash or non-monetary. The amount of money deducted from the proceeds of the lottery to cover prizes and any expenses must not comprise more than 80% of the total proceeds of the lottery. Donated prizes would not be counted as part of this 80% (as no money would be withdrawn from the proceeds to cover their purchase) but these should still be declared on the return following the lottery draw.

Operators who wish to award items containing alcohol as prizes, are advised to check with the local police or Cambridge City Council licensing team to ensure that licensing law is not breached.

Change of details

Please inform the Cambridge City Council Licensing Team of any change in details of your promoter or society as we use this information to produce a legal record and we are also required to notify the Gambling Commission of any changes.

Enforcement

Small society lotteries are intended to raise funds for 'good causes'. The Act gives the licensing authority a range of enforcement powers and sets out a number of offences in relation to small society lotteries.

Even where a society registers with a licensing authority, if it fails to comply with any of the conditions of a small society lottery set out in part 4 of Schedule 11 to the Act it will be operating in an illegal manner. Under these circumstances the Gambling Commission, the police or the licensing authority may prosecute the society.

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

- Making a late return of a statement or making no returns within a year of registration.
- Failure to pay fees as they become due.
- Reports of sales of lottery tickets to children.
- Reports of society lotteries being held without registration.
- Indications that the society has breached the lottery limits.
- Misappropriation of funds.

Social responsibility

Participation in a lottery is a form of gambling and societies should be aware of the need 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.

External lottery managers

External lottery managers are an individual, firm or company appointed by a society to manage a lottery or lotteries on behalf of the society. They are generally consultants who 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 are required to hold a lottery operator's licence issued by the Gambling Commission. Societies employing an unlicensed lottery manager commit an offence.

Individuals and firms can and do provide services to a society lottery without assuming the role of an external lottery manager. The degree of management is a crucial factor in deciding whether the third party is a 'service provider' only or has assumed the role of lottery manager. Indicators include:

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

WHAT ARE THE OTHER TYPES OF EXEMPT LOTTERIES?

Small Society Lotteries are required to register with licensing authorities. There are three other types of exempt lotteries

These do not require either an operating licence from the Gambling Commission or registration with the licensing authority. They are:

- **Incidental non-commercial lotteries**
- **Private lotteries** – which include private society lotteries, work lotteries and residents lotteries; and–
- **Customer lotteries**

If you are promoting a lottery like the ones below and you can answer “yes” to all the bullet points under the appropriate heading, then the lottery you wish to promote will be exempt from registration. If you cannot answer “yes” to all of the bullet points you may require registration as a small or large society lottery. Please contact the Cambridge City Council Licensing Team for advice.

Incidental non-commercial lotteries are exempt from registration if:

- No proceeds from the event will be used for private gain.
- The lottery is promoted wholly for a purpose other than private gain (for charitable purposes or a good cause).
- The promoters of the lottery will not be deducting more than £500 from the proceeds in respect of the cost of prizes.
- The promoters of the lottery will not be deducting 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.
- There will be no lottery roll over.
- Tickets will only be sold during the event and on the premises where the event is being held.
- The results will be made public while the event is taking place.

Examples of an incidental non commercial lottery may include a lottery held at a school fete, or at a social event evening.

Private lotteries

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

Private society lotteries are exempt from registration if:-

- The lottery will only be promoted by authorised members of a society.
- Tickets will only be sold to other members of that same society, or to persons on the society premises.
- The lottery will only be promoted for a purpose for which the society is conducted.
- The group or society is not established and conducted for purposes connected to gambling.
- The lottery will only be advertised on the society’s premises.
- Tickets will comply with certain conditions (see below).
- There will be no roll over.

Examples of this type of lottery include those limited to members working men’s clubs or sports clubs, where guests of the club are only permitted to participate when they are physically on the club premises. Category B3A

gaming machines offering lottery games permitted in members' clubs under regulations fall into this category.

Work lotteries are exempt from registration if–

- The promoter(s) of the lottery all work on a single set of work premises.
- Tickets will only be sold to other people who work on the same premises.
- The lottery will not be run for profit and all the proceeds will be used for prizes or reasonable expenses incurred in organising the lottery.
- The lottery will only be advertised on the work premises.
- Tickets will comply with certain provisions (see below).
- There will be no rollover.

An example of this type of lottery could be a sweepstake on the Grand National amongst work colleagues

Residents' lotteries are-exempt from registration if:

- The promoter of the lottery lives in a single set of premises.
- Tickets will only be sold to other residents of the same set of premises.
- The lottery will not be run for profit and all the proceeds will be used for prizes or reasonable expenses incurred in organising the lottery.
- The lottery will only be advertised at the relevant residence.
- There will be no rollover.
- Tickets will comply with certain conditions (see below).

An example of a residents' lottery may be a lottery that is held in student halls of residence for students only.

Tickets in private lotteries - conditions

Private lotteries, including category B3A gaming machines offering lottery games must comply with the conditions set out in Part 2 of Schedule 11 of the Act relating to the price and format of tickets. These are:

- Tickets 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.
- There will be no rollover.
- 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(s) of the lottery and the class of persons to whom the promoter can sell or supply tickets; and
- The price paid for each ticket in a private lottery must be the same, must be shown on the tickets and must be paid to the lottery promoter before any person is given a ticket.

Private lotteries cannot be conducted on vessels (Section 353 of the Act defines vessel).

Customer lotteries are exempt if:

- The lottery is promoted by a person who occupies premises in Great Britain for the purposes of a business (“the business premises”).
- Tickets are only sold or supplied by or on behalf of the promoter and only to customers when those customers are on the business premises.
- The lottery will only be advertised on the business premises on which it is held.
- No ticket will result in the winner receiving a prize worth more than £50.
- The tickets will be the same price and not transferable.
- The lottery will be organised to ensure that no profit is made.
- There will be no rollover.
- Each ticket will state the name and address of the promoter of the lottery, the class of persons to whom the promoters can sell or supply tickets and that the rights conferred by the sale or supply of a ticket in a customer lottery are not transferable.
- The draw will not take place within seven days of a previous draw in that customer lottery or another customer lottery promoted on the same business premises.

PRIZE COMPETITIONS AND FREE DRAWS

Prize competitions that 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, judgment or knowledge are exempt from statutory control.

Prize ‘skill’ competitions depend, on the exercise of skill, judgement or knowledge by participants. 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.

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 will be liable to prosecution.

A document setting out the Gambling Commission’s position on the issue of prize competitions and free draws is available on its website.

We would advise that you contact either the Cambridge City Council Licensing Team or the Gambling Commission for further advice.