



## Small Society Lotteries and the Gambling Act 2005 (the Act)

This guidance does not constitute legal advice. It is a general description that is not intended to be definitive in particular situations. If you have any queries over and above this guidance then you should seek advice from a solicitor. Please see the general *exclusion of liability*.

The Gambling Act 2005 came into force on the 1<sup>st</sup> September 2005 and replaced all pre-existing legislation. The Act created a new regulator for all gambling business in Britain, including lotteries, being the Gambling Commission (the Commission). More detailed information about anything to do with gambling is available from the Gambling Commission website at:  
<http://www.gamblingcommission.gov.uk>

The Gambling Commission has produced a booklet entitled "Lotteries and the Law" available for download at:  
[http://www.gamblingcommission.gov.uk/Client/news/pubs\\_detail.asp?Id=32](http://www.gamblingcommission.gov.uk/Client/news/pubs_detail.asp?Id=32)

NB. The National Lottery is not governed by the Gambling Act 2005 and is still regulated by the National Lottery Commission.

### Lottery Definition

The Act defines two types of lottery, simple and complex:

(1) A simple lottery is one where:

- Persons are required to pay in order to participate in the arrangement;
- In the course of the arrangement one or more prizes are allocated to one or more members of a class;
- The prizes are allocated by a process which relies wholly on chance.

(2) A complex lottery is where:

- Persons are required to pay in order to participate in the arrangement;
- In the course of the arrangement one or more prizes are allocated to one or more members of a class;
- The prizes are allocated by more than one process, the first of which relies wholly on chance.

An example of a complex lottery is a television phone-in quiz. Callers are picked at random by a computer to go through to the studio to try and answer a question. The initial element of chance qualifies the arrangement as a lottery irrespective of the skill later required.

A lottery is a form of gambling and promotion or facilitation of any lottery is unlawful unless it falls within one or more of the authorisations or exemptions provided by the Act which are:

- A lottery run in accordance with an operating licence issued by the Gambling Commission – large society lotteries and local authority lotteries; or
- An exempt lottery.

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## Exempt Lotteries

The following are types of exempt lottery:

- Small society lotteries for which registration is required with the Moray Licensing Board;
- Incidental non commercial lotteries;
- Private lotteries;
- Customer lotteries.

Therefore for any lottery to be exempt it must fall under one of the exempt categories and comply with the conditions of that exemption. If it does not then promoters must approach the Gambling Commission for an operating licence or they will commit an offence.

This leaflet concerns small society lotteries only. If you would like further information on lotteries that includes the conditions for other forms of exempt lottery then please request one of our leaflets on lotteries or visit the Council's website. It may be that if a particular lottery falls within another exempt category then registration with the Moray Licensing Board may not be necessary as registration is only required for small society lotteries. For other forms of exempt lottery there are no registration/licensing requirements as long as the conditions of exemption are met.

NB Prize competitions which are not otherwise betting, gaming or lotteries and free draws are exempt from regulatory control under the Gambling Act. If you would like further information on prize draws/free competitions then please request one of our leaflets or visit the Council's website.

Lottery operators should satisfy themselves that no operating licence is needed from the Gambling Commission.

## Definition of a Society

A society is a society (club, institution, organisation, association etc) or any branch of that society that is established and conducted:

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

It is not permissible to have a society whose sole purpose is to facilitate lotteries. It must have one of the purposes above and the proceeds must be devoted to those purposes. If the society cannot be considered as non-commercial then the Moray Licensing Board must refuse a small society registration.

## Small Society Lottery Features

- Largely as before the Act came into force with some notable exceptions;
- There is no individual limits on the percentage of proceeds that may be applied to expenses or prizes. However the maximum global amount that can be deducted for expenses and prizes remains at 80%. Therefore a minimum of 20% of the proceeds must go to the purposes of the society;

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- Prize funds can be rolled over from one lottery to another promoted by the same society, provided the maximum single prize does not exceed £25000.00 or 10% of the gross proceeds;
- Tickets may be sold by an automated process;
- There is no maximum limit on ticket prices.

## Conditions of Exemption

To be exempt from the requirement to obtain an operating licence from the Gambling Commission, a small society lottery must fulfil the following conditions:

1. It must be promoted wholly on behalf of a non-commercial society;
2. It must be small i.e. the total value of the tickets to be put on sale per single lottery must be less than £20000.00 or the aggregate value of all tickets for all lotteries in a calendar year must be below £250000.00. To exceed these limits will require a large society operating licence from the Commission;
3. It must be promoted for the purposes of the society. No private gain;
4. At least 20% of the proceeds must go to the society's purposes AND there is a maximum prize of £25000.00;
5. Requirements relating to tickets and payment for which see below;
6. It must be registered with the licensing authority for the area in which their principal office is located. For societies in Moray the relevant authority is the Moray Licensing Board and the registration must be valid for the whole period during which the lottery is being promoted;
7. Both a registration fee and an annual fee are payable details of which are also on the Moray Council's website;
8. Returns are required to the Moray Licensing Board within 3 months of the draw.

## Application Process

Registration as a small society lottery is on a standard form prescribed in Regulations and available from the Moray Council's offices or on the Council's website;

The registration form should be accompanied by:

- The required fee as prescribed in Regulations (for which see the form);
- A copy of any operator's terms and conditions;
- A copy of the society's constitution to confirm its establishment and conduct for non-commercial purposes;
- A declaration from the applicant (in the form attached) to confirm:
  - the society's non-commercial status; and
  - that the applicant has not been convicted of a relevant offence.

## Reasons for Refusal

The grounds for refusal are:

- If an operator has been refused an operating licence or has had it's licence revoked within the last 5 years then the Moray Licensing Board must refuse any application for small society registration;

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- If the society cannot be considered as non-commercial then the Moray Licensing Board must refuse a small society registration;
- A persons connected with the promotion of the lottery has been convicted of a relevant offence as listed in the Act and on the accompanying declaration form;
- If information provided in the application is found to be false or misleading.

The Moray Licensing Board will only refuse a registration after giving the society an opportunity to make representations.

Initially the Moray Licensing Board will provide the society with details as to why it is proposing to refuse a particular request for registration and invite comments from the society within 21 days.

Where it is considered necessary a hearing may be arranged where the society will be able to put its case directly to the Moray Licensing Board. The society can request a hearing in submissions but will not automatically be granted one. Where a hearing is to be held the Moray Licensing Board will give at least 21 clear days notice of the same to the society.

Strict time limits will be observed. All communication will be by ordinary post.

## **Registration Duration, Revocation and Annual Fee**

An annual fee is payable and for details of the current fee please visit the Council's website at: [www.moray.gov.uk](http://www.moray.gov.uk)

Paragraph 54 of Part 4 of Schedule 11 of the Act requires payment of an annual fee. There is no need to re-register each year but the fee must be paid. The Act also provides that if a registered society fails to pay the annual fee then the registering authority may cancel the society's registration. If the Moray Licensing Board cancels a particular registration then the society will be informed in writing by ordinary post. The Moray Licensing Board will also notify the Commission. Thereafter the society would have to register again and pay a further registration fee in order to offer further gambling facilities.

The annual fee is payable within the 2 months prior to the anniversary of the registration. For Societies registered prior to the 1<sup>st</sup> September 2007 this will be during November/December of each year. For those registered after the 1<sup>st</sup> September 2007 it will depend upon the date of registration. Please note that it is the society's to ensure that the fee is paid on time. The Moray Licensing Board is not obliged to issue annual reminders. If the fee is not paid and the registration is cancelled any exemption from the requirement to hold a lottery operating licence will be lost. It would then be a criminal offence to promote a lottery without the exemption or licence.

The Moray Licensing Board may revoke a registration if circumstances arise such that it would have had to, or would be entitled to, refuse an application if such an application had been made at that time. The same procedure will apply as for refusals.

At any time a registered society may apply in writing to the registering authority for the registration to be cancelled.

A small society lottery registration is of an unlimited duration unless and until it is revoked or cancelled.

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Where a society is registered with the Moray Licensing Board an authorised local authority officer has the right to enter premises owned or used by the society for the purpose of making inquiries in connection with a lottery promoted on behalf of the society.

## Code of Practice and Conduct of Small Society Lotteries

- Tickets can be real or virtual (e.g. an email or a text message). However all tickets must include the following information:
  - The name of the promoting society;
  - The price of the ticket. All tickets must be the same price and the price must be paid to the promoter before the ticket is issued;
  - The name and address of the society member designated as responsible for promoting lotteries or, if there is one, the external lottery manager;
  - The date of the draw or information which enables the date to be determined;
- Tickets may only be sold by persons over 16 to persons over 16. Societies must have procedures in place to minimise the risk of sales to underage persons including age checks;
- Tickets should not be sold in a street (including passages through enclosed premises like shopping malls)
- Small society lotteries are exempt from the wider requirements relating to remote gambling and tickets may be sold from:
  - a kiosk;
  - door to door;
  - by telephone or website
- Prizes can be cash or non-monetary. If alcohol is to be offered as a prize then the promoting society must ensure that licensing law is not breached;
- **Societies must now comply with the Gambling Commission's codes of practice including it's social responsibility requirements.** For details see the Gambling Commission's website.

## Society Returns

The Act sets out the information that the promoting society must send to the Moray Licensing Board following each lottery that is held:

- The arrangements for the lottery – the dates on which tickets were made available, the date of the draw, the value of prizes (including any donated prizes) and any rollover;
- Total proceeds of the lottery;
- Amounts deducted by the promoters for prizes , including prizes in accordance with any rollover;
- Amounts deducted in respect of costs incurred in organising the lottery;
- Amounts applied to the society's purposes (must be at least 20%);
- Whether any expenses were not paid for by deduction from the proceeds and, if so, the amounts and the sources from which they were paid.

A form of return will be returned with confirmation of registration and is also available on the Moray Council's website.

Returns must be submitted no later than 3 months after the date of the lottery draw or for instant wins e.g. scratch cards 3 months from the date when tickets were last made available. Returns must be signed (electronic signatures being acceptable) by 2 members of the society (over 18) who have been appointed by

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the society (or its governing body) in writing for the purpose and a copy of the written appointment must accompany the return.

The Moray Licensing Board will retain returns for at least 3 years and must make returns available to the public for a minimum of 18 months from the date of the draw.

The Moray Licensing Board will notify the Gambling Commission and the society if returns reveal that a lottery/lotteries has/have exceeded the values permissible. The Commission will then contact the society.

## **External Lottery Managers**

A licensed or registered society or local authority may employ an external lottery manager (ELM) to run all or part of its lottery. An ELM is someone that is a person or a company who makes arrangements for a lottery on behalf of a society or local authority but is not a member, officer or employee of the society or authority.

All ELMs must hold a lottery manager's operating licence issued by the Commission before they can manage a licensed society or local authority lottery or a society lottery registered with a local authority. It is the responsibility of the society or local authority lottery to ensure that before employing anyone to manage all or part of their lottery they hold a valid lottery manager operating licence issued by the Commission. A list of licensed ELMs is available on the Commission's website.

## **Enclosures**

Form for Registration of a Small Society Lottery

General leaflet on Lotteries and the Gambling Act 2005

General leaflet on Prize Competitions and Free Draws and the Gambling Act 2005

Form of Applicant's Declaration

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