



## **Prize Competitions, Free Draws (Prize Gaming Permits) 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>

Prize competitions which are not otherwise betting, gaming or lotteries and free draws are exempt from regulatory control under the Gambling Act. Therefore there are no licensing requirements for activities that genuinely fall within these categories. Where the Commission believes that a competition or draw is in fact an illegal unlicensed lottery it will have the power to investigate and prosecution may result.

A lottery is loosely defined as any scheme whereby persons are required to pay to participate and one or more prizes are allocated to the participants in the scheme by a method that relies wholly by chance or by a series of methods the first of which relies wholly on chance. For more detailed information about operating lawful lotteries under the Gambling Act 2005 please see the Gambling Commission's website or the Council's website for a copy of our leaflet. Lotteries generally take place for the benefit of good causes.

Being outside of the scope of the Act, prize competitions and free draws can therefore be organised commercially for private benefit and profit.

### **Prize Competitions**

Genuine prize competitions based on skill, judgement or knowledge are exempt from statutory control. This is because there is no element of chance involved and therefore the activity is not gaming as defined within the Act.

The effect of the Act is that a process is not to be treated as relying wholly on chance if it contains a requirement to exercise skill and judgement or knowledge that is reasonably likely to:

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- prevent a significant proportion of people who wish to participate from doing so i.e. measure the number of people who enter as against the number of people who are subsequently eliminated by the skill factor and the latter must be a significant proportion; 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 one of the tests as requiring skill and judgement is likely to be an illegal lottery and the operators of such competitions will be liable to investigation and possible prosecution.

In many cases, it will be obvious that such competitions meet that test. A crossword puzzle, where entrants have to solve a large number of clues and where only fully completed entries are submitted, is an obvious example. Other types of word and number puzzles, such as those which feature in competition magazines, are further examples. Further these still qualify as prize competitions even if those who successfully complete the puzzle are subsequently entered into a draw to pick the winner.

However there are many competitions which ask just one simple question, the answer to which is widely and commonly known or is blatantly obvious from the material accompanying the competition. The Commission considers that these do not meet the test in the Act. However a particular question or clue will not automatically fail to qualify as involving skill or knowledge just because the answer can be discovered by basic research, whether on the internet or elsewhere. There is a fine line and no further guidance is available.

In addition there is no guidance on what will constitute a significant proportion for the purposes of these tests. The phrase should therefore take its ordinary, natural meaning.

Operators in doubt should seek their own legal advice to satisfy themselves that their competitions are compliant with the law.

Finally, competition organisers will need to consider whether their competition may involve betting. Prediction competitions, such as ‘fantasy football’ games, are regulated as betting products and thus can only be offered under a relevant betting licence. However, a bet is defined to include making a bet on ‘whether anything is or is not true’ and other competition organisers will need to consider whether they are caught by this definition and thus whether their schemes involve betting

## Free Draws

In order for an arrangement to be considered a lottery persons must be required to pay to participate. Accordingly a “free” draw is not a lottery and is exempt from statutory control. The Act itself lays down detailed rules as to what is to be treated as payment for the purposes of distinguishing free draws from lotteries.

Basically the Act envisages two circumstances:

- Firstly, cases where there is only one entry route. Here, ‘free’ will include any method of communication (post, telephone or other) at a ‘normal rate’. ‘Normal rate’ is defined as “a rate which does not reflect the opportunity to enter a lottery” (first or second class post not special delivery). There can be no premium over what it would normally cost to use that method of communication;

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- Secondly, cases where there is a choice of entry route. Here, the arrangement will not be treated as requiring payment if:
  - each individual has a choice whether to participate by paying or by sending a communication;
  - that communication is either a letter sent by ordinary (1<sup>st</sup> or 2<sup>nd</sup> class) post or some other method which is neither more expensive nor less convenient than entering by the paid route (there can be no premium over what it would normally cost to use that method of communication);
  - the choice must be publicised so that it is likely to come to the attention of all potential participants; and
  - the system for allocating prizes does not distinguish between using the paid or the free route.

In both circumstances, the requirement to pay in order to participate also includes cases where there is a requirement to pay in order to discover whether a prize has been won or to take possession of a prize. It is also irrelevant to whom the payment is made or who benefits from any payment.

Finally, the Act also makes provision for product promotions. These are permitted where the price of the good or service does not include any element which reflects the opportunity to participate in the promotion. Therefore draws tied to product promotions are not to be treated as requiring payment to enter, and so are not to be regarded as lotteries, so long as entry involves no cost beyond the cost of the product.

## **Prize Gaming Permit**

Gaming is prize gaming if the nature and size of the prize is not determined by the number of people playing or the amount paid for or raised by the gaming. Unlike with lotteries, the prizes will be determined by the operator before play commences.

To operate prize gaming it is necessary to apply to the Moray Licensing Board for a prize gaming permit that authorises the provision of facilities for gaming with prizes on specified premises.

For information on Prize Gaming Permits please see the Moray Council's website or request one of our leaflets on the subject.

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