

Aberdeenshire Licensing Boards

Gambling Act 2005

Small Society Lotteries (Registration of Non-Commercial Societies) Regulations 2007

Guidance Notes for Small, Non-Commercial Societies

Wishing to Promote Lotteries

These explanatory notes summarise the main provisions of the Gambling Act 2005 ("the Act") and are intended to assist small, non-commercial societies and their officers in connection with registration and conduct of lotteries. These notes should be read in conjunction with the above-mentioned legislation (copies of which are available from HMSO). If you are in any doubt you would be best advised to consult a solicitor.

The Act includes three licensing objectives, which underpin the Act. These 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 persons from being harmed or exploited by gambling.

Any small, non-commercial society registered to promote lotteries under the Act will be expected to conduct lotteries in order to comply with these objectives.

1. The Status of Lotteries under the Act

1.1. As of 1st September 2007 the Gambling Act 2005 has:-

- repealed the Lotteries and Amusements Act 1976;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

1.2. Section 25 of the Act, defines a "licensing authority" as being a "licensing board" in Scotland for the purposes of administering lotteries.

1.3. In order to obtain the benefits of the Act, a small, non-commercial society must register with the licensing authority within whose area the office or headquarters of the society is based. It should be noted that where the total value of the tickets or chances to be sold in any one lottery promoted by a Society registered with the Local Authority exceeds £20,000, the society must instead, register with the Gambling Commission.

1.4. 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 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 four types of exempt lottery that are expressly permitted under Schedule 11 of the Act, including the small society lottery. The other types are outlined later in this Guidance Note.

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

2. **Definition of Lottery**

2.1. The Act prohibits the conduct of foreign lotteries.

2.2. There is no statutory definition of a "lottery" but the courts, through judgements in the House of Lords, have established the following criteria:

"A lottery is the distribution of prizes by chance where the persons taking part, or a substantial number of them, make a payment or consideration in return for obtaining their chance of a prize."

2.3. In essence, a lottery is an arrangement which satisfies all of the criteria contained within the statutory description of *either* a **simple lottery** or a **complex lottery**, under Section 14 of the Act.

2.4. 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.

2.5. 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.

3. **Definition of Society**

3.1. A "Society" is defined as the society, or any separate branch of such a society, on whose behalf a lottery is to be promoted and a licensing authority must satisfy itself that the purposes for which the society has been established are such that it is a non-commercial organisation. Section 19 of the Act defines a society as such if it is established and conducted:

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

3.2. It is essential 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.

4. **Local Authority Lotteries**

4.1. Local authorities are themselves entitled to operate their own lotteries, but may only do so if licensed by the Gambling Commission. Authorities must commit a minimum of 20% of the proceeds from such lotteries for a purpose for which they have power to incur expenditure, and must also adhere to the other relevant provisions in the Act. They may also need to hold a remote gambling operating licence, in the event that they wished to sell lottery tickets via electronic or technological methods such as over the telephone. This document does not focus on the details required for this type of lottery.

5. **Key Changes from the Lotteries and Amusements Act 1976**

5.1. There are a number of differences between the lotteries regimes operating before and after 1st September 2007.

5.2. The licensing authority for the purposes of registrations to promote lotteries is no longer the Local Authority. Instead it is the Local Licensing Board.

5.3. The Act introduces some relaxation of society lottery law and in particular:

- 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 a minimum of 20% going to the purposes of the society or to local authority expenditure;
- Allows rollovers of prize funds from one lottery to another promoted by the same society, provided the maximum single prize does not exceed £25,000 or 10% of the gross proceeds;
- Permits the sale of tickets by an automated process; and
- Removes the £2 maximum limit on ticket prices.

6. **Application and Registration Process for Small Society Lotteries**

- 6.1. A society wishing to register with the licensing authority to promote lotteries must satisfy the authority in 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. If the operator plans to exceed either of these values then they may need to be licensed with the Gambling Commission to operate large lotteries instead.
- 6.2. The Gambling Commission has produced an Advisory Document entitled “*Lotteries and the Law*”, which provides information for those seeking to run lotteries, focussing particularly on large society lotteries and the operating licence regime. Copies of this document can be found on the Gambling Commission website at www.gamblingcommission.gov.uk
- 6.3. Schedule 11 of the Act sets out the requirements on both small societies and licensing authorities with respect to the registration of small society lotteries. An extract of Schedule 11 is attached as Appendix 1 to these notes for information purposes.
- 6.4. A small society must register with the licensing authority in which their principal office is located. If the licensing authority believes that a society’s principal office is situated in another area, it shall inform the society and the other authority as soon as possible.
- 6.5. Applications for small society lottery registrations must be in the form prescribed by the Secretary of State and be accompanied by both the required registration fee and all necessary documents required by the licensing authority to assess the application accordingly.
- 6.6. Applications must be lodged with the licensing authority at least 28 days in advance of the date on which it is proposed to commence selling tickets for the lottery.
- 6.7. The licensing authority will ask new applicants for a copy of their terms and conditions or their constitution to establish that the society is a non-commercial society. Applicants will also require to provide a declaration stating that they represent a bona-fide non-commercial society.
- 6.8. Lotteries registrations, in the absence of objections, will be issued by officers. Applications which have attracted objections, will be referred to the next available meeting of the Licensing Board for consideration.
- 6.9. The Licensing authority will keep a register recording the details of all societies registered for the promotion of lotteries. The register will be made available to the public on request.
- 6.10. Once the application for registration has been accepted, processed and entered onto the local register, the licensing authority must then notify both the applicant and the Gambling Commission of the registration as soon as is practicable.
- 6.11. Once granted, registrations run for an unlimited period, unless the registration is cancelled, i.e. for non-payment of annual fee. If a licensing authority cancels the registration of a society they are required to notify the Gambling Commission.

6.12. The Licensing authority will issue reminders for payment of the annual fee, two months in advance of the date shown on the current Certificate of Registration.

7 Refusal of an Application

7.1. In summary, licensing authorities may propose to refuse an application for any of the following reasons:

- **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, within the past five years.**

The Gambling Commission issues operating licences. The Gambling Commission will advise licensing authorities of the details of people and organisations that have been refused an operating licence or have had an operating licence revoked in the past five years. The licensing authority will consult the Gambling Commission as part of their consideration of an application for registration.

- **The society in question cannot be deemed non-commercial.**

As outlined above, applicants will require to submit a copy of their terms and conditions or their constitution, and sign a declaration to the effect that they represent a bona-fide non-commercial society. Failure to provide this information may lead the licensing authority to refuse the application on the grounds that the society cannot be deemed to be non-commercial.

- **A person who will or may be connected with the promotion of the lottery has been convicted of a relevant offence.**

Applicants will require to provide a statement along with the application form for registration, declaring that they have no relevant convictions that would prevent them from running lotteries.

- **Information provided in or with the application for registration is found to be false or misleading**

7.2. A licensing authority may only refuse an application for registration after the society has had the opportunity to make representation. This may be done either through correspondence, or at a formal hearing of the Board. The licensing authority will inform the society of the reasons why it is minded to refuse the registration and provide it with an outline of the evidence on which it has reached that preliminary conclusion – in order to allow representations to be made. Representations and objections will be dealt with in line with the Licensing Board's normal procedure.

8 Revocation of a Small Society's Registered Status

8.1. The Licensing authority may determine to revoke the registration 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. Revocations cannot take place unless the society has been given an opportunity to make representations at a hearing or via correspondence. In preparation for this, the licensing authority will inform the society of the reasons why it is minded to revoke the registration and provide them with the terms of the evidence on which

it has reach that preliminary conclusion. Representations and objections will be dealt with in line with the Licensing Board's normal procedure.

9 Appeals

- 9.1. Where the licensing authority revokes or refuses a registration, the authority will notify the applicant or the society as soon as possible.
- 9.2. The applicant or society may decide to appeal the decision. There is a 21-day period in which appeal can be made the Sheriff Court.
- 9.3. The Sheriff Court may choose to affirm the decision of the licensing authority, reverse the decision, or make any other order.

10 Administration and Returns

- 10.1. As the purpose of permitted lotteries is to raise money for non-commercial causes, 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 does not comply with these limits it will be in breach of the Act's provisions, and consequently be liable for prosecution.
- 10.2. the limits placed on small society lotteries are as follows:
 - at least 20% of the lottery proceeds must be applied to the purposes of the society;
 - no single prize may be worth more than £25,000;
 - 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; 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.
- 10.3. A small society must send information, as returns, to the licensing authority with which it is registered, **following each lottery held**. This information allow the licensing authority to assess, in particular, whether financial limits are being adhered to and to ensure that any money raised is being applied for the proper purpose. The information that 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 value of prizes, including any donated prizes and 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 costs incurred in organising the lottery;

- The amount applied to the purpose for which the promoting society is conducted (this **must** be at least 20% of the proceeds); and
- 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.

10.4. Returns must:

- Be sent to the licensing authority **no later than three months after the date of the lottery draw**, or in the case of 'instant lotteries' (scratch cards) within three 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 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(s) of appointment.

10.5. The Gambling Commission may inspect a society's returns, although this will not be done routinely. Licensing authorities are required to retain returns for a minimum period of three years from the date of the lottery draw. They shall also make returns available for inspection by the general public for a minimum period of 18 months following the date of the lottery draw.

10.6. Licensing authorities shall also allow for returns to be submitted both electronically and manually. Details can be found on the Lotteries Section of Aberdeenshire Council's licensing web page which can be found on www.aberdeenshire.gov.uk

10.7. Licensing authorities have a duty to monitor the cumulative totals of returns to ensure that societies do not breach the annual monetary limit of £250,000 on ticket values.

10.8. Licensing authorities have a duty to notify the Gambling Commission if returns reveal that a society's lotteries have exceeded the values permitted. The Society must also be notified. The Gambling Commission will contact the society to determine if they are going to apply for a lottery operator's licence, thereby enabling them to run large society lotteries lawfully, and will inform the licensing authority of the outcome of its contact with the society.

10.9. Licensing authorities will also monitor the status of external lottery managers. These are individuals, companies or firms appointed by a society to manage a lottery or lotteries on behalf of the society and are generally consultants that take their fees from the expenses of the lottery.

11 External Lottery Managers' Licence status

11.1. External lottery managers require to hold a lottery operator's licence issued by the Gambling Commission to manage any lottery, including small society lotteries registered with a licensing authority.

11.2. There are people and organisations who regularly provide services to a society or local authority lottery without assuming the role of external lottery manager. To determine who is an external lottery manager or who is a 'service provider', the degree of management

undertaken by both the promoter and the sub-contractor are crucial factors. Key indicators will include:

- Who decides how the lottery scheme will operate;
- Who appoints and manages any sub-contractors;
- 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.

11.3. It is an offence for a society to employ an unlicensed external lottery manager. The Gambling Commission has a publicly-accessible register of operating licences on their website at www.gamblingcommission.gov.uk

12 Lottery Tickets

12.1. Lotteries can involve the issuing of physical or virtual tickets to participants. A virtual ticket can be an e-mail or a text, for example. ALL tickets must state:

- 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 (where applicable) the external lottery manager; and
- The date of the draw, or information which enables the date to be determined.

12.2. The licensing authority requires all small society lottery operators to maintain a written record of any unsold and returned tickets for the period of one year from the date of the lottery draw. The licensing authority may require to inspect these records for purposes relating to the lottery.

12.3. Tickets may only be sold by persons over the age of 16 to persons over the age of 16.

12.4. Tickets shall not be sold in a street. Street includes any bridge, road, lane, footway, subway, square, court or passage (including passages through enclosed premises such as shopping malls).

12.5. Tickets may, however, be sold from a kiosk, in a shop or door-to-door.

13 Prizes

13.1. Prizes awarded in a small society lottery can be either cash or non-monetary. The value of prizes declared must not exceed the limits set out by the Act – i.e. that combined with any expenses incurred with the running of the lottery, such as managers' fees, they must not comprise more than 80% of the total proceeds of the lottery. Donated prizes are not counted as part of this 80% but should still be declared on the return following the draw.

13.2. Societies should check with the licensing authority regarding any prize containing alcohol to ensure that there are no breaches of licensing law.

14 Compliance and Enforcement of Small Society Lotteries

14.1. Small society lotteries are intended to raise funds for 'good causes'. The Act gives licensing authorities a range of enforcement powers towards the lottery operators that they register. The licensing authority will pursue a risk-based approach, targeting higher-risk lotteries, so that resources are effectively concentrated on 'problem' lotteries.

14.2. The licensing authority considers the following criteria to be relevant in affecting the risk status of an operator:

- Submission of late returns (returns must be submitted no later than three months after the date on which the lottery draw was held);
- Submission of incomplete or incorrect returns; and
- Breaches of the limits for small society lotteries.

14.3. The Licensing authority will be prompted to investigate an operator where:

- The lottery return is lodged late after a lottery is held;
- No returns are made at all during a registration year;
- The annual fee is not paid when it becomes due;
- There are reports of sales of lottery tickets to persons under the age of sixteen;
- There are reports of sales of lottery tickets by persons under the age of sixteen;
- There are reports of societies running lotteries without holding a registration;
- There are indications that a society has breached permissible limits; and
- There are reports of misappropriation of funds.

15 Specific Offences in relation to Lotteries

15.1. The following offences apply to lotteries:

<u>Section of the Act</u>	<u>Offence</u>
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

<u>Section of the Act</u>	<u>Offence</u>
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

15.2. If a society running small lotteries fails to comply with any of the conditions of running such lotteries specified in part 4 of Schedule 11 to the Act, it will be operating in an illegal manner, irrespective of whether it is registered with a licensing authority or not. Under these circumstances small society lottery operators may face prosecution by the Gambling Committee, a licensing authority or the Police. The lead organisation for initiating prosecutions will vary depending upon the specific circumstances of the case.

16 Social Responsibility

- 16.1. Participation in a lottery is a form of gambling and societies registered with a licensing authority must conduct their lotteries in a socially responsible manner and in accordance with the Act.
- 16.2. Societies must implement effective procedures to minimise the risk of lottery tickets being sold by or to children, including procedures for:
- Checking the age of potentially underage purchasers of lottery tickets; and
 - Taking action where there are unlawful attempts to purchase tickets.

17 Other exempt lotteries

17.1. Exempt lotteries are those that can be held without being registered by the Gambling Authority. There are four types of exempt lottery, one of which is small society lotteries requiring to be registered with the licensing authority. The other three types are listed below.

Incidental Non-Commercial Lotteries

17.2. An incidental non-commercial lottery is one that is not promoted for private gain and is incidental to a non-commercial event. Examples include a lottery held at a school fete, or at a social event such as a dinner dance. An event is deemed non-commercial if all the money raised at the event, including entrance fees, goes entirely to purposes that are not for private gain.

17.3. For this type of lottery, Part One of Schedule 11 to the Act provides:

- The promoters of the lottery may not deduct more than £500 from the proceeds in respect of the cost of prizes;
- The promoters of the lottery may not deduct more than £100 from the proceeds in respect of the cost of other expenses, such as the printing of tickets or the hire of equipment;
- The lottery cannot involve a rollover of prizes from one lottery to another; and
- Tickets must only be sold at the premises during the event, and the result must be made public while the event take place.

Private Lotteries

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

- **Private society lottery** – these can only be promoted by authorised members of a 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. These would include lotteries limited to members of a working men’s club or a sports club, where guests at the club would not be permitted to participate. Category B3A gaming machines offering lottery games permitted in members’ clubs and miners’ welfare institutes under regulations fall into this category. Use of these machines is limited to people over the age of eighteen.
- **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. An example of this type of lottery could be a sweepstake on the Grand National.
- **Residents’ lottery** – 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). 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. An example would be a student hall of residence.

17.5. It is not permitted to advertise a private society, work or residents’ lottery on display or to distribute advertisements except at the society or work premises, or the relevant residence, nor can such advertisements be sent to any other premises.

17.6. Rollovers are prohibited in private lotteries.

17.7. Private lotteries, including category B3A gaming machines offering lottery games, must comply with conditions set out in part Two of Schedule 11 to the Act, relating to the price and format of tickets, as follows:

- 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;

- 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 or promoters of the lottery and the class of persons to whom the promoter(s) can sell or supply tickets; and
- The price paid for each ticket in a private lottery must be the same, must be shown on tickets, and must be paid to the lottery promoter before any person is given a ticket.

17.8. Private lotteries cannot be conducted on vessels. The Act defines a vessel as:

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

Customer Lotteries

17.9. Customer lotteries are run by the occupiers of business premises, who sell tickets only to customers present on their premises.

17.10. The Act requires the following in relation to customer lotteries:

- A ticket in a customer lottery may only be sold or supplied by the promoter or by someone on their behalf;
- No advertisement may be displayed or distributed except on the business premises, or sent to any other premises;
- The lottery may thus only be advertised on the premises on which it is held;
- No ticket may result in the winner receiving a prize worth more than £50;
- No rollovers of prizes between lotteries are permitted;
- 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;
- Customer lotteries may not take place within seven days of another customer lottery promoted on the same business premises.

17.11. Customer lotteries may not be conducted on vessels. See paragraph 17.8 for the definition of 'vessel'.

Free Draws and Prize Competitions

17.12. Free draws are exempt from statutory control under the Act. The issue of people being required to pay to participate is a key defining characteristic of a lottery.

17.13. Prize 'skill' competitions are distinguished from lotteries in that they depend, in part, 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.

17.14. If these barriers to entry and success can be shown, the process will not be deemed to rely wholly upon chance and will, therefore, **NOT** be defined as a lottery.