

## Lottery proceeds

Advice for society lotteries, local authority lotteries and external lottery managers about the requirements relating to the distribution of lottery proceeds

April 2013

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### 1 Introduction

- 1.1 The purpose of this note is to provide advice to the promoters of society and local authority lotteries and others about the requirements of the Gambling Act 2005 (the Act) relating to the distribution of lottery proceeds collected by non-commercial societies, local authorities and External Lottery Managers (ELMs) making the arrangements for lotteries on their behalf.
- 1.2 The interpretation of the Act is ultimately a matter for the courts but it is hoped that this advice note will be helpful to societies, local authorities and ELMs in understanding the requirements and the Commission's approach in respect of compliance with those requirements.
- 1.3 This note also contains some advice supplementary to the requirements of the Act, relevant regulations and the Licence Conditions and Codes of Practice (LCCP). Operators must also ensure they meet those requirements. For further information see the Commission's document '*Promoting society and local authority lotteries, November 2009*'.
- 1.4 The Commission may update this advice note from time to time to reflect developments in the sector.

### 2 Who can promote lotteries?

- 2.1 In addition to some small lotteries, which are 'exempt' from the requirement to hold a licence, the Act permits licensed or registered non-commercial societies and local authorities to promote lotteries. It is the view of the Commission that the intention is to allow non-commercial societies and local authorities to use a lottery as a means of raising funds to support their purposes.
- 2.2 The Act also allows those societies and local authorities to appoint a person - who is not a member, officer or employee of the society or local authority - as an ELM to make the arrangements for the lottery on their behalf. Where arrangements for the lottery are made by an ELM on behalf of a society or local authority, both the ELM and the society or local authority promote the lottery<sup>1</sup>. The intention of the provision is relatively limited in scope; it is designed to do nothing more than allow a society or local authority to outsource the running of its lottery or a part of its lottery to a third party.

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<sup>1</sup> Section 252(4) of the Gambling Act 2005

### 3 'Proceeds' and 'profits' of a lottery

3.1 The Act defines the proceeds of a lottery as 'the aggregate of amounts paid in respect of the purchase of lottery tickets'<sup>2</sup> (the total amount paid for tickets before any deductions). The Act also specifies the way in which the proceeds of a lottery must be distributed, as follows under section 99(2):

**99 Mandatory conditions of lottery operating licence**

- (2). The first requirement, is that at least 20% of the proceeds of any lottery promoted in reliance on the licence are applied-
- (a) in the case of a licence issued to a non-commercial society, to a purpose for which the promoting society is conducted, and
  - (b) in the case of a licence issued to a local authority, for a purpose for which the authority has power to incur expenditure.

3.2 The Act describes the proportion of the proceeds remaining after prizes and expenses have been deducted as the 'profits' of the lottery<sup>3</sup>. The Commission's view is that the intention of the requirement to apply 'at least' 20% of the proceeds to the purposes of the promoting society is to maintain the fundamental principle set out in the Act for society and local authority lotteries that they are only permitted as a mechanism to enable fundraising for purposes other than that of private or commercial gain. Society and local authority lottery operators are reminded that 20% is the minimum amount of proceeds from each lottery that must be applied to their purposes. In the Commission's view the 'purposes' of a society are the aims and objectives for which the society primarily exists. The 'profits' of a lottery cannot be used for any other purpose.

3.3 Lottery promoters should also take note of the licensing objective in the Act that requires all gambling to be conducted in a 'fair and open way'. This has specific relevance to society or local authority lotteries who advertise a specific percentage return to their purposes from each lottery on tickets or in marketing material. Societies and local authorities must ensure that the advertised percentage rate of return is met if they are to avoid acting in a manner inconsistent with the second licensing objective.

3.4 The level of expenses and prizes allocated from the proceeds must not be such as to reduce the profits to below 20%. In addition to profits the proceeds can only be used to:

- provide prizes
- or to pay expenses 'reasonably incurred' organising the lottery.

3.5 In circumstances where the proceeds are insufficient to pay the total expenses and the cost of providing prizes in the lottery, the society or local authority must still ensure that 20% of the proceeds are applied to its purposes. In such cases the society or local authority may have to pay the expenses of the lottery and/or the cost of prizes from other (non-lottery) sources of income such as their financial reserves and the lottery may result in an overall financial loss for the promoting society or local authority<sup>4</sup>.

### 4 The expenses of a lottery

4.1 The Act defines the expenses of a lottery as 'costs reasonably incurred organising the lottery'. It is the responsibility of the promoting society or local authority to ensure that when making the arrangements for a lottery, that any expenses have been reasonably incurred. The expenses of a lottery are the costs incurred organising the lottery and this may include expenditure such as the salaries of those organising the lottery, the cost of selling or supplying lottery tickets, printing and distributing tickets and marketing material or paying any fee to an ELM or other service provider that has been rightly incurred in the course of

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<sup>2</sup> Section 254(1) of the Gambling Act 2005

<sup>3</sup> Section 254(2) of the Gambling Act

<sup>4</sup> Lottery operators will wish to take note of Charity Commission advice on how charity law applies to fundraising: [Charities and Fundraising](#)

organising the lottery (or part of the lottery) for the society or local authority. The expenses of a lottery do not include any expenditure relating to any other fundraising activity not directly connected to organising the lottery, even if that fundraising activity is undertaken in conjunction with the promotion of a lottery.

- 4.2** Where an ELM is employed to make the arrangements for all or part of the lottery, including paying prizes and expenses, the society or local authority is equally responsible with the ELM<sup>5</sup> for the promotion of the lottery. That includes ensuring that all expenses are 'reasonably incurred' and that a minimum of 20% of the proceeds are returned to the purposes of the promoting society or to the local authority. It is also important that the promoters of the lottery ensure that the lottery is conducted fairly and openly and that consumers are not misled as to the proportion of the ticket price that is applied to the purposes of the society.
- 4.3** When apportioning the expenses of a society or local authority lottery and recording how the proceeds collected have been used to pay the expenses, the Commission's view is that it is reasonable for some of the 'start up' costs from the proceeds genuinely attributable to the lottery as a whole rather than those related to a specific lottery to be spread over a number of lotteries. These may include, for example, the marketing and advertising or the initial costs of recruiting members to a new lottery. Any expenses that are spread over a number of lotteries must be expenditure directly attributable to those lotteries and the Commission would expect any expenses being treated in this way to be spread over a reasonable and time limited period. The Commission also considers that it is not unlawful for a promoter to use income from sources other than lottery proceeds to fund the start-up costs or other costs of a lottery.
- 4.4** Irrespective of how a lottery operator decides to spread the costs of a lottery the priority must be to ensure that a minimum of 20% of the proceeds of each individual lottery are applied to the purposes of the promoting society or local authority.

## 5 Lottery submissions

- 5.1** The licence conditions attached to all lottery operating licences include a requirement that in respect of each lottery promoted a submission must be sent to the Commission within three months of the date of the lottery, showing the total proceeds and how they have been distributed. It is the responsibility of the licensee to ensure that any lottery submission made in respect of the distribution of the proceeds of a lottery is a true and accurate reflection of how those proceeds have been distributed.
- 5.2** In respect of prizes and expenses, lottery promoters must ensure that only the proportion of proceeds of the lottery used to pay the costs of providing prizes and paying the expenses of the lottery are recorded in the lottery submission sent to the Commission. Funds generated from other sources of income used to pay the expenses or prizes in a lottery must not be recorded in those submissions. The actual total costs of promoting the lottery, including donated prizes and expenses, should be recorded in the annual accounts of the promoting society or local authority. The Commission may require lottery operators to provide their annual accounts or separately submit details of donated expenses and prizes in a lottery where it considers this necessary.

## 6 Non compliance

- 6.1** The Commission requires all lottery promoters to comply with the licensing objectives and treats any breach of the licence conditions very seriously. It expects all licensed lottery operators to put in place arrangements to make sure that the proceeds of each lottery are distributed in a lawful and compliant way. That includes ensuring that a minimum of 20% of the proceeds of each lottery promoted are applied to the purposes of the society or local

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<sup>5</sup> Section 252(4) of the Gambling Act 2005

authority and that any expenses are reasonably incurred. Misuse of the ‘profits’ of a lottery may constitute a criminal offence<sup>6</sup>. In circumstances where a breach of the Act and/or the licence conditions occurs the Commission will consider what regulatory or other action it needs to take. That could include a review of the operating licence of the promoting society, local authority and ELM and following that review the Commission has the power to impose sanctions such as a formal warning, additional licence conditions, a financial penalty or suspension or revocation of an operating licence.

Gambling Commission April 2013

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[www.gamblingcommission.gov.uk](http://www.gamblingcommission.gov.uk)

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<sup>6</sup> Section 260 of the Gambling Act 2005