

**Lottery guidance for charity trading
companies and sporting clubs:
Gambling Act 2005**

December 2007

Charity trading companies

A number of charities who run lotteries as one of their fundraising activities have traditionally done so through a trading company, and often it has been that company, rather than the charity itself, which registers with the Gambling Commission (and its predecessor, the Gaming Board for Great Britain) under Schedule 1A of the Lotteries & Amusements Act 1976.

Concern has been expressed in some quarters as to whether this practice may properly continue under the new licensing arrangements in the Gambling Act 2005 (“the Act”).

Under the Act, a lottery operating licence may only be issued by the Commission to a non-commercial society, a local authority, or a person proposing to act as an external lottery manager on behalf of such societies or local authorities.

Section 19 of the Act defines a “non-commercial society” as follows:

Non-commercial society

- (1) For the purposes of this Act a society is non-commercial if it is established and conducted –
 - (a) for charitable purposes,
 - (b) for the purpose of enabling participation in, or of supporting, sport, athletics or a cultural activity; or
 - (c) for any other non-commercial purpose other than that of private gain.
- (2) In subsection (1) “charitable purposes” means –
 - (a) in relation to England and Wales, purposes which are exclusively charitable according to the law of England and Wales, and
 - (b) in relation to Scotland, purposes which are charitable purposes only (that expression having the same meaning as in the Income Tax Acts).
- (3) The provision of a benefit to one or more individuals is not a provision for the purpose of private gain for the purposes of this Act if made in the course of the activities of a society that is a non-commercial society by virtue of subsection (1)(a) or (b).

A question has arisen whether a charity’s trading company can be regarded as established and conducted for a “non-commercial” purpose, particularly when the company may, typically, be involved not only in running a lottery to support its parent charity, but also in selling merchandise (perhaps from a charity shop) to generate profits which can be donated to that charity, or where the charity is a membership organisation, providing services to members with a view to a modest profit for charity funds.

Whilst the Courts are the only body that can provide a definitive ruling on the meaning of legislation, the Commission sets out here the circumstances in which it considers charity trading companies may satisfy the Act’s “non-commercial” test.

Under paragraph 67 in Schedule 4 to The Gambling Act 2005 (Commencement No.6 and Transitional Provisions) Order 2006 (SI 2006 No 3272) the Commission has a duty to grant a lottery operating licence to every society which, as at 1 September 2007, has a registration with it according to Schedule 1A of the 1976 Act. That obligation will be honoured.

Looking to the future, the Commission appreciates that a charity’s trading subsidiary has a “commercial” purpose in the sense that it intends its activities to generate profit; but the intention is to do so in order to pass that profit to its parent charity.

Accordingly, whilst the Commission takes the view that it would be entirely appropriate for any charity wishing to promote a lottery to raise funds, to obtain a lottery operating licence (whether it runs the lotteries in-house or engages the services of an external lottery manager), nevertheless the

Commission will consider charities' trading subsidiaries as eligible to hold licences under section 19(1)(a) of the Act for so long as they are either:

- companies limited by guarantee whose member is the charity or whose members are the trustees of the charity;
- companies limited by shares and all of the shares are held by the charity, or its Trustees;
- in either case:
 - the company's purposes includes expressed or implied support of the charity;
 - the company's powers extend to the promotion of lotteries ; and
 - the company's net profits in any trading period are subject only to a reasonable retention, (generally thought to be not more than 10%) for working capital purposes) donated to the charity under a Deed of Covenant or Gift Aid.

Sporting clubs

In the issue of sporting clubs holding lottery licences, it is our view that these organisations fall within section 19(1)(b) and are therefore deemed non-commercial.

Qualifying as non-commercial

If a charity is concerned whether its trading subsidiary would qualify as a non-commercial society, or a sporting club is concerned as to whether it can hold a lottery licence, please contact the Gambling Commission.

Gambling Commission July 2007

The Gambling Commission regulates gambling in the public interest. It does so by keeping crime out of gambling, by ensuring that gambling is conducted fairly and openly, and by protecting children and vulnerable people from being harmed or exploited by gambling. The Commission also provides independent advice to government on gambling in Britain.

For further information or to register your interest in the Commission please visit our website at:
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