

## External Lottery Managers

The main requirements of the Gambling Act 2005, licence conditions and their role in promoting society and local authority lotteries

September 2014 (updated April 2018)

---

### 1 Introduction

- 1.1 The purpose of this note is to provide advice to External Lottery Managers (ELMs), society and local authority lotteries and others about the requirements of the Gambling Act 2005 relating to ELMs.
- 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 ELMs, societies and local authorities in understanding the requirements and the Gambling 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). For further information see [Promoting society and local authority lotteries](#) and the conditions and codes attached to your licence.
- 1.4 The Commission may update this advice note from time to time to reflect developments in the sector.

### 2 What is an ELM?

- 2.1 Lotteries within Great Britain are the preserve of good causes and as such the Act did not intend ELMs to be primarily a vehicle to create profit for commercial organisations; rather, the intention was to enable societies and local authorities to raise funds for their own non-commercial purposes.
- 2.2 An ELM is defined in section 257 of the Act as someone that 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 local authority. A society or local authority and an ELM must be separate entities and be able to demonstrate that they are independent of each other.
- 2.3 To this end the Commission would not consider ELMs to be independent if, for example, a director or employee of an ELM was also a trustee, director, employee or member of the society whose lottery they are promoting.
- 2.4 The Commission might not also consider the ELM and society to be independent if, for example, a director or employee of an ELM was closely connected to someone (e.g. a family member or personal friend or associate) who was a trustee, director or individual holding a strategic decision making role within the society whose lottery the ELM is promoting.

- 2.5** The Act allows societies and local authorities to employ ELMs to manage all or part of their lotteries so that societies and local authorities may benefit from the experience or economies of scale that come with employing an ELM.
- 2.6** Under section 252 of the Act, a person promotes a lottery if they make or participate in making the arrangements for a lottery. It states further that a person promotes a lottery in particular if they:
- make arrangements for printing of tickets
  - make arrangements for the printing, publication and distribution of promotional material<sup>1</sup>
  - make arrangements to advertise a lottery
  - invite an individual to participate in a lottery
  - sell or supply tickets
  - offer to sell or supply tickets
  - use premises for the purpose of allocating prizes or for any other purpose connected with the administration of a lottery.
- 2.7** A person commits an offence under the Act<sup>2</sup> if they carry out any of these activities on behalf of a society or local authority unless they:
- are an officer, employee or a member of a licensed or registered society or local authority; or
  - are a licensed ELM directed by a society or local authority to run all or part of its lottery.
- 2.8** A person also commits an offence if they facilitate a society or local authority lottery unless they act in accordance with an operating licence. A person facilitates a lottery<sup>3</sup> if they:
- print lottery tickets for a specified lottery
  - print promotional material for a specified lottery
  - advertise a specified lottery.
- 2.9** Uncertainty can arise as to whether services provided to societies or local authorities amount to the promotion or facilitation of a lottery or to the provision of services which do not amount to promotion or facilitation. The Commission's advice note [Promoting society and local authority lotteries](#) gives further guidance on the distinctions between the two, but anyone who is uncertain whether the services provided require the provider to hold an ELM licence should contact the Commission for further guidance.

### 3 Licensing requirements

- 3.1** An ELM must hold a lottery manager operating licence issued by the Commission before they can promote a society or local authority lottery. The ELM (and the relevant society or local authority) will also need to hold a remote gambling licence if they intend to sell tickets by means of remote communication (eg internet, telephone etc).
- 3.2** It is the responsibility of both the society (or local authority) and the ELM to ensure that the other party holds the relevant operating licence(s) before they enter into any arrangements regarding the promotion of lotteries.
- 3.3** Unless an ELM qualifies as a small scale operator (SSO),<sup>4</sup> individuals holding key management positions at an ELM may be required to hold a Personal Management Licence (PML) - this may be the managing director, chief executive, finance director, compliance manager, marketing manager and IT manager.

---

<sup>1</sup> Promotional material is defined as a document that advertises, invites participation, contains information about how to participate, or lists winners, in a particular lottery.

<sup>2</sup> Section 258 of the Gambling Act 2005

<sup>3</sup> Section 259 of the Gambling Act 2005

<sup>4</sup> A gambling operator qualifies as an SSO unless there are four or more persons who have responsibility for any of the key functions.

- 3.4** The Commission expects all licensed operators to put in place people and systems to enable them to be compliant with the Act and licence conditions. In general the function of regulatory compliance should be assumed by one individual who will have overall responsibility for ensuring compliance. For large scale operators the person holding responsibility for compliance should have no other function in order to ensure they can carry out their role without the potential for any conflict of interest. The Commission understands and accepts that this may not always be possible for small scale operators who have few employees able to hold key management positions.

## **4 The purpose of society and local authority lotteries**

- 4.1** The intention of the Act is to allow non-commercial societies to use a lottery as a means of raising funds from the public for the cause promoted by the society or for the local authority to raise funds for any purpose for which they have the power to incur expenditure. The provisions are relatively limited in scope. It is not the intention of the Act to allow society or local authority lotteries to be promoted for private or commercial gain although it is accepted that an ELM is a commercial business that usually exists to produce a commercial profit.
- 4.2** The proportion of the proceeds of a lottery that are distributed for the purposes of the society or local authority are called the 'profits' (see section 7 - Proceeds and profits, and the Commission's advice note [Lottery proceeds, April 2013](#) for further information). Each society or local authority lottery must return a minimum of 20% of the proceeds to the purposes of the society or local authority.
- 4.3** Under section 260 of the Act it is an offence to use any part of the 'profits' of a lottery for a purpose other than that stated by the society or in the promotional material<sup>5</sup>.
- 4.4** Alongside the profits, the proceeds of a lottery will be split between the payment of prizes and paying reasonable expenses<sup>6</sup>. The expenses can include a payment to an ELM in respect of the services provided in respect of promotion of the lottery. However, that payment must be proportionate and reflect the lawful status of the lottery as a means of raising funds to support a non-commercial society or local authority. The promoting society or local authority must ensure any fees paid to an ELM constitute an expense reasonably incurred organising the lottery.

## **5 The relationship between ELMs and society and local authority lotteries**

- 5.1** The Act allows a society or local authority lottery to employ an ELM to manage all or part of its lottery on its behalf<sup>7</sup>. The intention of these provisions is relatively limited in scope: they are designed to do nothing more than to allow a society to 'outsource' the running of a lottery to a third party.
- 5.2** The fact that a society or local authority may employ a licensed ELM to manage all or part of its lottery does not absolve the society or local authority from its responsibility for ensuring that the lottery is conducted in such a way as to ensure that it is lawful and fully compliant with the Act, related regulations and all licence conditions and codes of practice.
- 5.3** Where an ELM is employed to make the arrangements for all or part of the lottery including paying prizes and the expenses, the society or the local authority is equally responsible, with the ELM<sup>8</sup>, for the lawful distribution of the proceeds.

---

<sup>5</sup> Section 260 of the Gambling Act 2005. Section 261 applies the same offence to small society lotteries

<sup>6</sup> Section 254 of the Gambling Act 2005

<sup>7</sup> Section 257 of the Gambling Act 2005

<sup>8</sup> Section 252(4) of the Gambling Act 2005

This includes the mandatory requirement to return a minimum of 20% of the proceeds of any lottery promoted to the purposes for which the promoting society is conducted or the local authority has the power to incur expenditure (for further information, refer to the Commission's advice note [Lottery proceeds, April 2013](#)).

- 5.4** If an ELM (or a service provider) is involved in the distribution of the proceeds, the Commission expects that they agree with the society or local authority in advance about how they will be distributed. This should include discussing and agreeing the prize structure, and ensuring that any expenses are reasonably incurred. If involved in the distribution of the profits of a lottery (ie the proportion returned for the purposes of the society or local authority), this must be done in accordance with terms agreed with the society or local authority and in accordance with the society's or local authority's purpose. The society or local authority must always retain overall control of the distribution of profits.

## **6 Licence conditions and codes of practice relating to ELMs**

- 6.1** All ELMs licensed by the Commission to run lotteries on behalf of societies and local authorities are required to comply with specific conditions and codes of practice relevant to them. The specific licence conditions are set out at the time a licence is issued and are printed on the licence.
- 6.2** Some of the licence conditions and codes of practice applicable to ELMs are referred to below. Specific details are contained in the [Licence conditions and codes of practice](#).

### **Protection of customer funds and lottery proceeds**

- 6.3** There are a number of requirements on ELMs in relation to protecting customer funds as well as the proceeds of lotteries by putting 'ring-fencing' in place. In relation to customer funds the LCCP requires that:

'Licensees who hold customer funds must ensure that these are held in a separate client bank account or accounts<sup>9</sup>.'

and;

'Licensees who hold customer funds must set out clearly in the terms and conditions under which they provide facilities for gambling information about whether customer funds are protected in the event of insolvency, the level of such protection and the by which this is achieved.

Such information must be according to such rating system and in such form the Commission may from time to time specify. It must be provided in writing to each customer, in a manner which requires the customer to acknowledge receipt of the information and does not permit the customer to utilise the funds for gambling until they have done so, both on the first occasion on which the customer deposits funds and on the occasion of any subsequent deposit which is the first since a change in the licensee's terms in relation to protection of such funds.<sup>10</sup>

- 6.4** The LCCP also sets out a definition of customer funds.

---

<sup>9</sup> Condition 4.1.1 of the Licence Conditions and Codes of Practice (April 2018)

<sup>10</sup> Condition 4.2.1 of the Licence Conditions and Codes of Practice (April 2018)

**6.5** For lottery proceeds, the following applies:

'Licensees must have arrangements in place to ensure separation between lottery proceeds they hold on behalf of non-commercial societies or local authorities and their own trading income and that such lottery proceeds are legally protected by means of separate bank accounts having trustee status or equivalent legal protection for each society or local authority in the event of the licensee's insolvency, in which event the proceeds will be paid to the society or local authority.'<sup>11</sup>

**6.6** The second part of the above is specific to ELMs who hold the proceeds of a lottery on behalf of a society or local authority prior to or following a lottery draw. It is vital for an ELM to understand that the proceeds of any lottery are proceeds belonging to the society or local authority and that they are holding those funds in trust on behalf of those entities. The Commission places particular importance on the ELM having sufficient arrangements in place to protect those funds (the proceeds) for the society or local authority to ensure that they are not used for any purpose other than that which the Act permits and that they are protected in the event of the ELM's insolvency or any claim on the ELM's financial reserves.

**6.7** Section 254 of the Act defines 'proceeds' as 'the aggregate of amounts paid in respect of the purchase of lottery tickets'. The Commission's view is that if monies are committed/appropriated to the purchase of a ticket in a specific lottery draw, then the monies are likely to be 'proceeds'. If monies are held in an account before being 'allocated to a gamble' (a lottery) then the monies are likely to be customer funds. For example, monies paid in advance by those wishing to partake in lotteries are customer funds until they are committed/appropriated to the purchase of a lottery ticket in a particular draw and thereafter lottery proceeds within the definition in section 254(1). Lottery proceeds also have the potential to revert to being customer funds in the event the draw does not take place, or in the event the subscription is cancelled and where the stake is refunded to the participant.

## **Social responsibility**

**6.8** Lotteries are a form of gambling and as such ELMs are required to ensure that children and other vulnerable people are not harmed or exploited by the lotteries they manage. Societies and local authorities have the same requirements placed on them.

**6.9** The minimum age for participation in a society or local authority lottery is 16 years. A person commits an offence if they invite or allow a child (someone under the age of 16) to enter such a lottery. ELMs, licensed societies and local authorities must have written policies and procedures in place to help prevent and deal with cases of under-age play. They must be able to evidence how these procedures and policies are applied to mitigate any risk to the licensing objectives<sup>12</sup>.

**6.10** Licence holders must take all reasonable steps to ensure that information about how to gamble responsibly and how to access information and help in respect of problem gambling is readily available, and all marketing material for the lottery must display the begambleaware logo (including a link to the begambleaware website in the case of electronic material).

**6.11** All licence holders are required to make a contribution to research, education and treatment in relation to problem gambling. ELMs, licensed societies and local authorities should ensure this provision is met either directly or through membership of a trade body that makes a donation to a recognised organisation on behalf of its members.

---

<sup>11</sup> Condition 11.2.1 of the Licence Conditions and Codes of Practice (April 2018)

<sup>12</sup> Preventing gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime; ensuring gambling is conducted in a fair and open way; protecting children and other vulnerable persons from being harmed or exploited by gambling (Section 1 of the Gambling Act 2005)

A licensed society must meet this provision and it can be rightly included as an expense of the lottery or can be taken from other non-lottery financial reserves.

- 6.12** ELM's are also required to make a contribution but it cannot form part of the expenses of a lottery although in the Commission's view it is permissible for the funds to come from the part of the expenses paid to the ELM by the society for providing their services. While the Commission does not specify the recipient or the amount of the contribution, many licensees choose to make a donation to the Responsible Gambling Trust, based on a percentage of their gross gambling yield.
- 6.13** Further information about social responsibility requirements is available in the Commission's [Licence conditions and codes of practice \(LCCP\)](#). Sector- specific extracts from the LCCP are available to download from the Commission's [website](#).

## Regulatory returns

- 6.14** Licence condition 15.3 requires that all ELMs submit an annual regulatory return to the Commission. The return must be submitted within 42 days of the end of the annual business period. This must contain all of the necessary information requested by the Commission and is best submitted securely online at [www.gamblingcommission.gov.uk](http://www.gamblingcommission.gov.uk).
- 6.15** Where the ELM makes the arrangements for any part of the lottery they must record the proportion of the proceeds of the lottery generated by the ELM's activity and include this in their regulatory return, together with details on the annual managed proceeds split by product type. In some circumstances, the ELM may need to request this information from the society.
- 6.16** For example, if the ELM is only 'making arrangements' in respect of one aspect of the lottery campaign such as direct mail, the ELM is only required to report the proceeds generated by that aspect of the lottery.

## Lottery Submissions

- 6.17** 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 society and the ELM 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.
- 6.18** Where the ELM is instructed by a society to make lottery submissions on its behalf the ELM must ensure that the society approves every submission before it is made.

## 7 Proceeds and profits

- 7.1** Section 254 of the Act clarifies what is meant by 'proceeds' and 'profits' of a lottery. It defines proceeds as 'the aggregate of amounts paid in respect of the purchase of lottery tickets'. This means that proceeds are the total amount paid for tickets before any deductions.
- 7.2** Profits are defined as the amount of proceeds less any deductions for prizes, rollovers and reasonable expenses incurred in connection with running the lottery.
- 7.3** Section 99 (2) of the Act specifies the way in which the proceeds of a lottery must be distributed, as follows:
- '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’.

- 7.4** In addition to profits the proceeds can only be used to:
- provide prizes or
  - pay expenses ‘reasonably incurred’ organising the lottery.

- 7.5** Further information regarding lottery proceeds can be found in the Commission’s advice note [Lottery proceeds, April 2013](#).

## **8 Non-compliance**

- 8.1** The Commission requires all lottery operators to comply with the licensing objectives of the Act and treats any breach of the licence conditions very seriously. In circumstances where either a breach of the Act or the licence conditions occurs the Commission will consider what criminal or regulatory action it needs to take. That could include a review of the ELM’s operating licence, which could result in a formal warning, additional licence conditions, a financial penalty or suspension or revocation of the operating licence. Further details can be found in the Commission’s [Licensing, compliance and enforcement policy statement](#), which is available from the Commission’s website.

- 8.2** In circumstances whereby the ELM has been deemed to have committed a breach of the Act or the licence conditions the Commission may also consider taking action against the society or societies they promote lotteries for. This would be the case where the society was deemed to have failed to ensure that the lottery was conducted in such a way as to ensure that it was lawful and fully compliant with the Act, related regulations and all licence conditions and codes of practice.

**April 2018**

---

**making gambling fairer and safer**

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