



Department for Culture Media & Sport

DIRECTIONS TO THE GAMBLING COMMISSION

UNDER SECTION 11 OF THE NATIONAL LOTTERY ETC. ACT 1993

Interpretation

1. In these directions-

"the Act" means the National Lottery etc. Act 1993;

"the Commission" means the Gambling Commission;

"the constituent lottery" means a lottery that forms part of the National Lottery;

"draw", in relation to a lottery, includes any process by which a prize in the lottery is allocated;

"licensee" means any person who holds a licence granted under sections 5 or 6 of the Act;

"NLDF" means the National Lottery Distribution Fund;

"play" has the same meaning as in the interpretation to the Schedules to the licence granted under section 6 of the Act relating to the National Lottery Lotto; and

"Secretary of State" means the Secretary of State for Culture, Media and Sport.

The directions given to the National Lottery Commission by the Secretary of State on 26 September 2013 are revoked.

Types of lottery

2. The Commission shall exercise its functions under sections 5 and 6 of the Act in such a manner as to ensure that no licence is granted which authorises the promotion of any lottery or lotteries of any description which in the opinion of the Commission:

a) encourage persons to participate excessively in such lotteries; or

b) do not allow for sufficient controls to prevent persons who have not attained the age of 16 years from participating in such lotteries.

3. The Commission shall exercise its functions under section 6 of the Act in such a manner as to ensure no licence is granted which allows more than two draws to take place in any period of two hours, save and except for the EuroMillions draws only for which a maximum of four draws are permitted in any two hour period. This applies irrespective of whether the draws are made in the same or different lotteries authorised to be promoted under the licence.

4. The Commission shall exercise its functions under section 6 of the Act in such a manner to ensure that no licence is granted where the effect would be to allow more than one draw to take place in any period of one hour where the draws are made in associated lotteries. For the purposes of this direction two lotteries promoted under separate licences under section 6 of the Act are to be treated as associated lotteries where:

a) one lottery is of the same description as the other lottery (apart from any variation with respect to the time when any draw in the lottery can take place); or

b) in the opinion of the Commission, one lottery is of the same description as the other lottery except for a minor variation in the timing, prize structure, entry price or some other aspect of the lotteries.

5. But directions 3 and 4 shall not apply to any lottery where each prize in the lottery:

a) is allocated to a ticket or play before any ticket or play is sold; or

b) is pre-determined at the point of purchase of any ticket or play.

Limit on ticket prices

6. The Commission shall exercise its functions under section 5 and 6 in such a manner as to ensure that no licence is granted which authorises the promotion of a lottery, the price of tickets and plays for which is, in the opinion of the Commission, unreasonably high.

Unclaimed prizes

7. The Commission shall:
 - a) exercise its functions under sections 5 and 6 of the Act in such a manner as to ensure that the rules of every constituent lottery provide for a period for claiming prizes which in the opinion of the Commission is reasonable in order to allow a claim for a prize to be made; and
 - b) exercise its powers under section 5 of the Act to include a condition in the licence granted under section 5 of the Act which provides that all prizes which have not been claimed in accordance with the rules of the relevant constituent lottery are paid to the Secretary of State.

Further conditions in licences

8. The Commission shall exercise its functions under section 7 to include in the licence granted under section 5 of the Act or, as appropriate, in licences granted under section 6 of the Act, conditions which have the following effects:
 - a) that the Commission and persons authorised by the Commission will have the powers to inspect all forms of records relevant to Lottery contracts or operations held by-
 - i. any licensee; or
 - ii. any contractor of any such licensee who in the opinion of the Commission is a significant contractor.
 - b) that the Commission has the power to approve any party to a contract with any licensee where in the opinion of the Commission the contract is significant;
 - c) that information for participants as to whether they have won a prize in any constituent lottery is available without any payment to the licensee being required and without undue inconvenience to the participant;
 - d) that no tickets or plays in a constituent lottery are given away free or sold for less than the full price applicable in accordance with the rules of the relevant constituent lottery (whether in connection with the advertisement or marketing of the National Lottery or any constituent lottery or otherwise) unless:
 - i. a payment reflecting the full price of the ticket or play is made, whether by a licensee or another person;
 - ii. the price of the ticket or play applicable in accordance with the rules of the relevant constituent lottery is counted in full in the value of sales when calculating the licensee's primary contribution in accordance with the terms of the licence granted under section 5 of the Act; or
 - iii. subject to direction 9, the Commission has given its consent;
 - e) that the identity of any person who has won a prize in a constituent lottery shall not be disclosed without the consent of that person, unless required by law. For the purpose of this direction 8(e), where a ticket in a constituent lottery is presented by a player to a retailer to ascertain whether that ticket is a prize-winner, or to claim a prize, a sound made by a lottery terminal to indicate that a winning ticket has been presented and/or the presentation of a prize entitlement message will not of itself constitute disclosure of a person's identity; and
 - f) that information as to the percentages of the NLDF which are allocated for the good causes referred to in paragraphs (a) to (f) of section 22 (3) of the Act as it has effect from time to time is available at places where tickets in constituent lotteries are sold.
9. For the purpose of direction 8(d)(iii) the Commission shall only consent to a proposal to give away free tickets or plays or sell tickets or plays for less than full price if it is satisfied that:
 - a) the proposal will not encourage excessive or underage play; and
 - b) the proposal is likely to increase overall returns to good causes.

Financial penalties

- c) In the exercise of its functions under section 10A of the Act, the Commission shall act in accordance with the attached extract from the former Director General of the National Lottery's publication "Financial Penalties: Principles and Procedures". The Commission shall not amend that extract without having first obtained the consent of the Secretary of State for that amendment.

Performance standards

- d) The Commission shall establish and publish appropriate performance standards in respect of its functions under sections 5 to 10A of the Act. Such performance standards should, in particular, relate to the Commission's relationship with licensees and the public. The Commission shall report its performance against those standards in the annual report it is required to make by section 14 of the Act.

Raising public awareness

- e) The Commission shall facilitate the operation of a body whose purpose shall be to raise positive public awareness of and support for the benefits of the distribution of funding from the proceeds of the National Lottery, with the aim of helping to maximise returns to good causes from the proceeds of the National Lottery.

Olympic Lottery proceeds

- f) The Commission shall not exercise its functions under section 21(2) of the Horserace Betting and Olympic Lottery Act 2004 in relation to the determination of the proportion of proceeds of lotteries forming part of the National Lottery that is attributed to Olympic Lotteries without having first obtained the approval of the Secretary of State.

Promotional prize activity

- g) The Commission shall exercise its functions in respect of any licence granted under section 5 of the Act such that any adjustment to the sum that is payable under section 5(6) of the Act for the purposes of any promotional prize activity to be undertaken by the licensee shall:
- i. be subject to the consent of the Commission;
 - ii. not exceed, in any financial year, the amount of unclaimed prizes paid to the Secretary of State in accordance with Direction 7b in the previous financial year; and
 - iii. be subject to repayment on such terms as the Commission shall require.



**On behalf of the Secretary of State
Department for Culture, Media and Sport
2 September 2016**

Financial penalties

Financial penalties: principles and procedures

Statement by the Director General of the National Lottery

The National Lottery Act 1998 ("the 1998 Act") allows me to impose financial penalties for contraventions of conditions in licenses granted under sections 5 or 6 of the National Lottery etc. Act 1993 ("the 1993 Act"). This power will enable me to deal more flexibly with contraventions without prejudice to my being able in particularly serious cases to revoke a licence or apply for an injunction. In using the new power I will act reasonably and proportionately, both in considering whether to impose a financial penalty and in assessing its amount. It may be helpful if I describe the other principles that I will follow in using the power and procedures that I expect to adopt.

Principles

Subject to my duties to ensure that the National Lottery is run with all due propriety, to protect the interests of every participant and, subject to those factors, to do my best to secure that the net proceeds are as great as possible, I will in exercising the new power take due account of any likely effect on the commercial viability of the licensees.

The 1998 Act states that the matters to which I may have regard in imposing a financial penalty may include the desirability of deterring further contraventions and of recovering any financial loss to the National Lottery Distribution Fund. Where there is a clear and direct financial loss of this kind I will not necessarily seek to recover all the loss but will take account both of the size of the loss and the profitability of the licensee concerned.

Under the 1998 Act my consideration need not be limited to the matters which it mentions. I intend to include, but not limit myself to, the following among the other factors that I will take into account in deciding whether to impose a penalty and in assessing its amount:

- whether key principles underlying the relevant licenses as indicated by my statutory duties as mentioned above have been infringed;
- whether the National Lottery has been brought into disrepute;
- the extent of any financial advantage that the licensee may have derived from the contravention;
- the capacity of the licensee to have avoided the contravention and whether it has been the result of deliberate action or negligence;
- the extent to which the licensee has committed similar contraventions in the past; and
- the financial position of the licensee, calculated on the basis that distributions of profits have been within the limits set in the licence(s) which apply to the licensee.

Before issuing a proposal to impose a financial penalty, I will normally invite comments on a statement of my reasons for believing that there had been a contravention. In subsequently considering whether to issue a proposal and assessing the amount of a penalty, I will make allowance for the effectiveness and timeliness of any corrective action that the licensee has taken, and will view seriously any failure to take such action.

My predecessor stated in his Annual Report for you for the year up to 31 March 1997 that if he had been empowered to impose financial penalties on Camelot it was likely that he would have used them in connection with the failure to meet the licence requirement for the number of retail operational outlets to be operational at the first two quarter ends during 1996. I regard the factors above as likely to have led me to the same conclusion. By way of another example, I would regard the failure by Camelot to comply with its licence requirement to use its best endeavours to comply with the Player Code of Practice with regard to the prohibition of sales to persons under 16 years of age, and the taking of appropriate action also to point to the use of a financial penalty. I will, of course, need to consider any case that arises on its merits.

Procedures

I reserve the discretion to issue a proposal to impose a financial penalty as soon as a contravention comes to my notice if I consider that it is sufficiently clear and grave or that corrective action is sufficiently urgent. A licensee will under the 1998 Act then have 21 days in which to make written representations or notify me of an intention to make oral representations.

However, in other cases I will invite a licensee to comment within 21 days on a statement of my reasons for believing that there has been a contravention. I will require the licensee within the same timescale to demonstrate that existing systems are adequate or to take or initiate any corrective action that is needed to come into line with licence requirements. If I decide after that period to issue a proposal to impose a financial penalty, the licensee will under the 1998 Act have a further 21 days to make written representations or to notify me of an intention to make oral representations. In cases involving a significant infringement of key principles under the licence such as propriety, or player protection, or clear financial loss to the National Lottery Distribution Fund, but where I have not issued a proposal to impose a financial penalty at the outset, I may decide to issue a proposal to impose one notwithstanding the fact that corrective action has been taken. I may also decide to issue a proposal if the licensee has committed similar contraventions in the past.

The contravening of a licence condition is a ground in the 1993 Act under which I may revoke a licence. The 1998 Act does not change this power or my ability to apply to the court to grant an injunction restraining a contravention or to take steps to remedy it. While I reserve the right to make immediate use of any of my statutory powers, I would expect to revoke a licence following a contravention of a licence condition only if I believed that the integrity of the National Lottery had been seriously compromised.

10 July 1998