

Gambling Act 2005 and the Gambling Commission

The questions, answers and notes below attempt to address potential concerns that may arise from the change in legislation. A great deal of the details of the Act is still out for consultation and can be found on the Gambling Commission's website www.gamblingcommission.gov.uk . The information is provided in the context of the existing law which will be superseded by the new Act. The full details of which are not yet available.

The notes focus on bingo and small lotteries.

When does the Act come into force?

The Gambling Act 2005 received Royal Assent in April 2005.

The Department for Culture, Media and Sport (DCMS) is responsible for developing regulations under the Act and bringing these and sections of the Act into force as necessary. These are expected to come fully into force in 2007.

Under the Act local authorities will license premises to undertake the activities as detailed section 1.1 of the *Draft Policy Statement*.

The Act allows for the setting up of the Gambling Commission to regulate the operating of gambling activities, and issue licenses to people involved in the industry. They will also be responsible for enforcement action in relation to gaming activities.

What will the Gambling Commission regulate?

The Gambling Commission has taken over the role of Gaming Board for Great Britain in regulating casinos, bingo, gaming machines and certain lotteries. From 2007, it will also regulate betting and remote gambling.

The Commission does not regulate spread betting (which is regulated by the Financial Services Authority) or the National Lottery.(which is regulated by the National Lottery Commission)

What powers will the Commission have?

When the 2005 Act is fully in force in 2007, the Commission will have the following powers:

- It may impose conditions on the licenses it grants, and it will issue codes of practice.
- It will be able to review licenses.
- Sanctions available to it will include formal warnings, the amendment of license conditions, imposition of financial penalties of any amount, and license revocation.
- Its staff will have powers of entry, search and seizure.

- It will have enforcement powers to tackle illegal gambling and cheating and will be able to initiate criminal proceedings.

What role will the Gambling Commission have in ensuring problem gamblers receive treatment for their addiction?

Treatment for problem gamblers is currently funded by the industry through the Responsibility in Gambling Trust (through, for example, organisations such as GamCare or Gordon House, which help and treats addicted gamblers).

The Commission will work with operators to ensure that information about where to get help or treatment is made available in gambling venues and on remote gambling platforms. This will help to ensure that an individual who is experiencing problems with their gambling is aware of where to get help.

Bingo

The Gaming Act 1968 will be superseded by the Gambling Act 2005, currently the Gambling Commission is consulting on changes to the details of the legislation including for example whether Residential Care Homes and similar organisations and Groups will require a permit to organise bingo events.

What will be the effect of the new Gambling Act on bingo?

The Gambling Commission is currently consulting on the implementation of the Gambling Act 2005, which comes into force in 2007. There will be some changes to the licensing system, while the Commission has also been given enhanced regulatory powers.

Can social clubs hold bingo games for their members?

Section 40 of the Gaming Act 1968 allows clubs that have at least 25 members and have been established for purposes other than gaming to play bingo as one of its activities. Members of the public cannot be admitted. A charge of no more than 60p per person per day can be levied but those fees must be used for the benefit of the club. Although there is no limit on the stakes for this type of bingo, the stakes must be returned in the form of prizes to those participating. Although there are no legal age restrictions on players, the club committee may set an age limit as part of its own club rules.

I run a private members' or proprietary club registered under part II of the 1968 Gaming Act. Can bingo be played on the premises?

Bingo may be played in a members' club with at least 25 members provided that it has been established for a principal purpose other than gaming. The premises may be registered under Part II of the Act with the local licensing authority. The cost of registration is £235 on first being granted (duration 1 year) and £120 on renewal (which may cover a period of up to 10 years). Clubs registered in this way may make charges of up to £2.00 per person per day, which is a separate charge from the stakes. There is no limit on stakes, which must be distributed in full as winnings in the games in which they are hazarded (less any bingo duty which may be payable). Bona fide guests, that

is to say in this connection, guests who are not required to make any payments themselves either for admission or - apart from any stakes hazarded - for playing bingo, may take part in the bingo. No person under the age of 18 may be present in the room while bingo is taking place.

Can I run a bingo without obtaining a licence?

Yes, Section 41 of the Gaming Act allows bingo at entertainments not held for private gain to be played for charitable purposes. The interpretation of "charitable purposes" is broad in that it includes bingo played in a number of different settings provided it is not played for commercial gain. For example, sheltered housing residents and any number of local organisations such as scouting associations may wish to play bingo either for the benefit of the members or for the upkeep of that organisation. This is permissible provided that no-one playing bingo is charged more than £4.00 to cover admission and stakes, that the total value of prizes is less than £400 and that after the deduction of reasonable expenses all surplus profit is used for purpose other than private gain.

There is no need to return as prizes all stake money taken from the purchase of bingo tickets. The only stipulation is that all proceeds from the bingo, after the deduction of reasonable expenses and the allocation of prizes, are used for purposes other than private gain. Anyone may participate in Section 41, including children.

I am a publican and would like to play bingo on the premises for the benefit of my customers – am I allowed to?

Bingo is a game of chance and, as such, the licensing authorities may consider applications for it to be authorised under Section 6(3) of the Gaming Act 1968. However, in the Gambling Commission's view, bingo would most likely induce persons to attend the premises primarily for the purposes of taking part in the gaming, over which the Commission's Gaming Inspectorate has no statutory control. The aim of these applications under Section 6 appears to be to boost bar takings, whereas the purpose of this section is to allow minor gaming for harmless amusement with no commercial motive. It appears to the Gambling Commission inappropriate that bingo should be played in public houses.

I am running a corporate or private function with entertainments to raise money for a charitable cause – can bingo be played at such an event?

Section 15 of the Lotteries and Amusements Act 1976 allows for "amusements with prizes" where the organiser or promoter of an "exempt entertainment" (for example, a fete, dinner, dance, sporting event or bazaar) may lawfully provide as part of the entertainment any "amusement with prizes", whether it is a lottery or gaming or both, provided the following conditions are met:

- The whole proceeds of the entertainment, after deducting the expenses of the entertainment, must be devoted to purposes other than private gain;

- The facilities for winning prizes at such amusements are not the only or substantial inducement to persons to attend the entertainment.

Commercial promoters

- For many years, commercial organisations have offered to provide equipment and gaming staff to persons organising gaming nights. These events are becoming more numerous and may not always fall within the law.
- In many instances it is clear that, far from being incidental to the overall entertainment, it is intended to be the main if not the only attraction of the event and is, therefore, unlawful.
- The legality of such gaming depends very much on individual circumstances and only the courts can interpret definitively whether an entertainment is lawful or not. If any doubt exists, a promoter should seek legal advice.

Lotteries and the Law

What is a lottery?

There is no statutory definition of a "lottery" but the courts, through judgments 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.

LOTTERIES AND AMUSEMENT ACT 1976 (AS AMENDED) [This legislation will be superseded by the Gambling Act 2005]

Under the Act, which covers only Great Britain, all lotteries which do not constitute gaming are unlawful, unless they are:

- a) small lotteries incidental to an exempt entertainment;
- b) private lotteries;
- c) society lotteries;
- d) local authority lotteries; or
- e) part of the National Lottery.

The Act prohibits the conduct of foreign lotteries in this country. A society or local authority lottery would not be lawful if tickets were sold outside Great Britain.

Lotteries which sell to members of the public require a license.

Lotteries outside the Commission's jurisdiction

The Gambling Commission is essentially concerned with society and local authority lotteries, however, there is a legal framework covering small and private lotteries. The Commission has no legal responsibilities for such lotteries, which do not need to be registered with any statutory body, and those seeking to promote them may therefore consider it prudent to seek professional advice if they are in any doubt about the legality of their proposals.

Small lotteries incidental to an exempt entertainment

An "exempt entertainment" is defined in the Act as a "bazaar, sale of work, fete, dinner, dance, sporting or athletic event or other entertainment of a similar character, whether limited to one day or extending over two or more days".

Section 3 of the 1976 Act gives full details of the conditions which have to be observed in promoting a lottery as an incident to an exempt entertainment. Some examples of these conditions are:

- a) that the proceeds, after deducting certain specified expenses, must along with the proceeds of the "exempt entertainment", be used for purposes other than private gain;
- b) that the tickets can be sold only on the premises and during the course of the exempt entertainment;
- c) that no more than £250 can be spent on buying prizes;
- d) that no money prizes can be awarded.

While only the courts can give an authoritative interpretation of the law, it is the view of the Home Office that it is lawful to offer liquor prizes in lotteries held under section 3 of the 1976 Act at exempt entertainment's such as fetes and bazaars without the need to obtain a liquor licence. However, the Home Office considers that the practice of charity shops selling lottery tickets under Section 3 is unlawful as exempt entertainment's are construed as "one-off" events.

Private Lotteries

A private lottery is one in which the sale of tickets is confined to either:

- a) members of one society established and conducted for purposes not connected with gaming, betting or lotteries and any other persons on the society's premises; or
- b) persons all of whom either work or reside on the same premises.

Under Section 4 of the Act there is no limitation on the value of either stakes or prizes. However, there are a number of rules which must be observed in promoting a private lottery. The main effect is as follows:

- a) The promoter must be a member of the club or society who is authorised in writing by the club's governing body to run the lottery.
- b) There can be no management fee, or expenses percentages. The only deductions allowed are for printing and stationary.
- c) There is no fixed percentage for the distribution of income, it can be used totally for prizes or divided between prizes and the club fund.
- d) No written notice or advertisement of the lottery may be exhibited except on the club or society premises or at the premises where the members work or reside or on the tickets.
- e) The price of every entry must be the same.
- f) No ticket may be sent through the post.

(There appears to be no requirement under Section 4 to have tickets at all. Such a lottery may be run in the manner of a sweepstake).

Registration with the Commission

The Act provides that:

- a) a society wishing to promote a lottery must itself be registered with either the appropriate local registration authority or the Gambling Commission. A society must register with the Commission if:
 - i) the total value of tickets or chances to be put on sale in any lottery is to exceed £20,000; or
 - ii) the total value of tickets or chances to be put on sale in any lottery, added to the value of those already sold or put on sale in all earlier lotteries in the same calendar year, is to exceed £250,000.
- b) A local authority may decide to use the net proceeds of its lottery for any purpose for which it has power to incur expenditure. The Home Secretary may in certain circumstances, on application, consent to the proceeds of lotteries which have been held being used for a purpose other than that originally decided by the local authority.

Once a society has registered with the Commission, the Act requires it to conduct all further lotteries, of whatever size, under Commission registration until three clear calendar years have elapsed during which no lottery has been conducted which would itself have necessitated Commission registration.

Society Lottery

A society is defined as including any club, institution, organisation or association of persons, by whatever name called, and any separate branch or section of such a club, institution, organisation or association. In a case in 1996 the Court stressed the importance of the word "separate" in this definition. It is clear that "branches" which have identical constitutions and memberships and conduct no activity other than the running of lotteries are unlikely to meet the statutory definition of a society.

A society lottery means a lottery promoted on behalf of a society which is established and conducted wholly or mainly for one of the following purposes:

- a) charitable purposes;
- b) participation in or support of athletic sports or games or cultural activities;
- c) purposes which are not described in a) or b) above but are purposes neither of private gain nor of any commercial undertaking.

The whole proceeds of a society's lottery, after the deduction of amounts for expenses and prizes, must be applied to the purposes of the society.