

## Introduction

### Advice provided to DCMS on society lotteries

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Following the CMS Select Committee Inquiry into Society Lotteries in 2014, the Department for Digital, Culture, Media and Sport (DCMS) asked the Gambling Commission (the Commission) to provide formal advice on a broad range of matters related to legislative reform for the society lottery sector.

The Department asked the Commission to provide advice to inform potential reforms, taking consideration of the following objectives:

- The regulatory framework for society lotteries should not be overly burdensome and that new entrants should not face unnecessary barriers
- Public trust and confidence in society lotteries and the good causes with which they are associated should be maintained
- Whilst looking to create some flexibility to maximise returns to society lottery good causes, reform should not jeopardise the position of the National Lottery and its returns to good causes.

The Commission provided a response to that request in two phases. Phase 1 was provided in October 2015 and covered the following areas:

- How often to review caps in the future and whether the Commission should publish information on the annual turnover, single draw size and maximum prize awarded by individual society lotteries.
- Allowing lotteries to hold large and small lottery licences simultaneously.
- Showing information about the proportion of lottery receipts given to good causes, distributed in prizes and used in operational expenses on each ticket and how best to improve how transparency information is made available to the public, including through publication on the Gambling Commission website.
- Allowing private sector companies to run lotteries on behalf of good causes.
- Allowing societies to run lotteries on behalf of other societies.
- Assess Camelot's proposals (as noted by the Select Committee) aimed at improving the clarity of marketing around lottery-like betting products and whether betting on lotteries should be banned.
- Conduct a review of the process for applying for a lottery licence to ensure that it does not provide unnecessary burdens on new applicants.

Phase 2 was provided in January 2016 covering:

- Raising the current limits on sales and prizes for small and large society lotteries and to what level
- Re-introducing an expenses cap for the largest lotteries at 35%.
- Whether the minimum contribution to good causes should be reviewed and at what level this should be set
- Whether the largest lotteries should pay 12% lottery duty if they do not return 32% of proceeds to good causes
- Introducing a separate class of umbrella lotteries with separate limits on individual draws, annual sales and prizes and how best to structure such a class, for example through setting limits on prizes, limiting the number of lotteries that can join together or stipulating different limits on the constituent lotteries

- Spreading the 20% admin requirements over an extended period, for example one year or three years

In 2017, we reviewed both phases of the advice and provided this update to DCMS in October of that year. This took account of data received in the interim period as well as measures we had already introduced or proposed and provided an opportunity to confirm if our recommendations from the original advice were still valid and appropriate.

This document provides each of those pieces of advice<sup>1</sup>, starting with the 2017 review. We recommend they are read in full, as although the latest advice document contains the up to date position, it does not contain the full detail, for example in explaining the impacts that changes in each area may have on another. However, it should be noted that the Phase 1 and 2 advice is now over two years old and so the data from those Phases should be considered historic in nature.

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<sup>1</sup> Some information provided to DCMS has been redacted from these documents to commercial sensitivity.

## Review of society lotteries advice

October 2017

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### Executive summary

#### Introduction

The Department for Digital, Culture, Media and Sport (DCMS) asked the Gambling Commission, in its capacity as the Secretary of State's statutory adviser on gambling and its regulation, to provide a review of the advice we provided in October 2015 (Phase 1) and January 2016 (Phase 2) on a range of matters relating to the Culture, Media and Sport Select Committee's report arising from its inquiry into society lotteries.

In order to reassess our previous recommendations, we have carried out a further review considering up to date data we hold in relation to the society lottery sector. At DCMS' request we have particularly focused on the areas related to the limits placed on sales and prizes in the society lotteries sector and what appropriate changes to those limits might be.

Having done so, we can advise that none of the advice we gave previously is subject to change. This is due to the fact that the further data hasn't shown anything that would cause us to consider a change in position.

#### Overview of findings

The society lottery sector continues to grow with our latest industry statistics showing that, in the year ending September 2016, the sector sold lottery tickets valuing over £531 million. This is an eight percent increase on the previous period and well over 100% increase on the last five years. We also know that on average, almost 44% of the money collected via those ticket sales contributes directly to the core aims of those societies. A total of £231.8 million was returned to good causes (October 2015 – September 2016), which is a nine percent increase from the previous period, and follows the year-on-year growth since 2009. Even with this significant growth there is no further evidence of impact on National Lottery sales, as the relative scale of the society lottery sector is still greatly limited by the regulatory constraints, for both ticket sales (proceeds) and maximum permitted prizes, within which it currently operates. By way of context, sales of National Lottery products for the same period were £7.4 billion (a 3% decrease compared to the year prior), while National Lottery returns to good causes were £1.7 billion (6% lower than the previous 12 month period). Therefore, although a significant growth for the society lottery market, that growth is comparatively low in terms of actual spend against that of the National Lottery market. It would be unlikely to have made a significant impact, even if all of those sales had been at the expense of the National Lottery.

However, what we have seen from the review of our own data (focusing on sales and prizes limits), is that more societies are invested in introducing or expanding weekly lotteries to secure a regular income, and are growing to push against the annual limits on proceeds. This strengthens the case for the need to raise that limit if we are seeking to allow society lotteries the ability to raise more funds for their good causes.

As a reminder, the advice previously given was in the context set by DCMS, whereby its objective was to ensure that any changes safeguard against the risk of detrimental impact on the National

Lottery's ability to raise funds for good causes; and at the same time to ensure that returns to society lottery good causes could be maximised and that regulatory regimes should not be overly burdensome.

We think it may be helpful to set out a fuller picture around why we are continuing to suggest a cautious approach and maintaining the limits we suggested in our previous advice. We hope that this will allay concerns about not creating further ability for society lotteries to raise funds.

The individual limits proposed do appear as (and are) only a small increase, but coupled with an increase to the aggregate proceeds that may be raised by an individual society to £100 million in a year, should create the ability to raise more funds and offer slightly higher prizes (if proceeds allow); whilst maintaining the distinction between society lotteries and the National Lottery that it is the stated aim to protect.

A key distinction of the National Lottery from society lotteries is the ability to offer 'life changing' prize amounts. Permitting a £1 million prize for society lotteries may impact that. For example, this could create direct competition for the £1 million raffle prize, which is a key National Lottery product. A higher prize offer, coupled with a particular good cause, could be a very attractive consumer proposition and potentially impact the space in which the National Lottery currently operates.

On a practical point, raising the prize limit to £1 million doesn't appear to help the sector particularly at its present state (although noting that this is a suggestion to create growth), as the ability to offer that level of prize (whether donated or directly from proceeds) is still set by the percentage of proceeds the Gambling Act 2005 (the Act) permits to be given over to an individual prize (or to £25,000, whichever is the greater). At present that is 10%; even if government doubled that to 20% (and raised the individual proceeds limits to £5 million) the majority of lotteries would be unable to reach the maximum proceeds required. Even the largest do not currently do so. In fact, no single lottery has ever reached the current £4 million maximum individual limit, and less than 1% of lotteries approach this level on an annual basis, compared with approximately 6% of operators who are within 20% of the annual limit. Societies running subscription lotteries are also constrained by the annual aggregate proceeds, as this effectively limits the amount of tickets they can sell each week, and therefore the maximum prize that may be offered.

Taking account of all of those things, it is reasonable to say that taking a cautionary approach at the moment is unlikely to inhibit the sector in the short term, whilst it will provide the opportunity to monitor the impact of lower level changes. Equally, regardless of any changes to the individual proceeds limits, it would be extremely difficult for societies to offer a £1 million prize unless the percentage cap itself was amended significantly. Alternatively the link between proceeds collected and the size of the prizes could be removed from the legislation, but this would be a significant change to the structure of the current legislation. It would essentially remove the requirement that intrinsically links the value of the prize to a percentage value of the total proceeds and would require a change to primary legislation<sup>1</sup>. Either option risks impacting the balance to good causes. And the latter does not appear to be an appropriate option at the present time, given that Parliamentary time is likely to be focused elsewhere and the majority of the sector is not in a position to be able to offer such a prize.

In light of that and given the lack of available evidence on which to base any solid predictions, we have and continue to suggest a cautious approach to changes to the regulations related to proceeds and prize limits in the society lottery sector. We remain of the view that the proposals set out in our advice are still the most appropriate initial action to take in order for DCMS to move forward with its stated objectives in mind.

In summary, in relation to the limits on sales and prizes for large society lotteries we continue to recommend that the:

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<sup>1</sup> Section 99(4) of the Gambling Act 2005

- prize percentage limit remains the same (10% of individual draw proceeds) and the prize limit that does not take account of proceeds remains the same (£25,000)
- individual draw limit is raised by a limited amount, from £4 million to £5 million, which would also have the impact of raising the maximum individual prize limit to £500,000 (dependent on ticket sales)
- aggregate proceeds limit is raised to the level suggested by lottery stakeholders, from £10 million to £100 million, and that
- impact of these changes is monitored.

Although our previous advice across all of the questions raised by DCMS has not changed, we have provided some updates and further data to support those recommendations. These follow the same order as the documents received by DCMS in 2015 and 2016. We have noted where progress has been made in relation to any particular area and updated relevant data points where appropriate.

### **Additional information**

We have also provided information on the growth of Local Authority lotteries<sup>2</sup>. Although this was not within the scope of the original advice, we consider it to be relevant to DCMS policy considerations and so have included an overview of the current position at section 12: Emergence and growth of local authority lotteries. In brief, although currently not significant in terms of scale, we are seeing an increasing uptake in the number of Local Authorities seeking to operate their own lotteries.

### **Research analysis**

As noted in our previous advice, in 2012 and 2015 the Commission asked researchers to construct an econometric model to identify key drivers in National Lottery demand and the impact of society lottery growth. The Commission asked the researchers in February 2017 to update this forecast with current data. They reached the same conclusion as in the previous work done for the Commission - in that there was no statistically significant effect of society lotteries affecting National Lottery sales.

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<sup>2</sup> Local Authority lotteries are lotteries operated by a local authority, licensed by the Gambling Commission. They are distinct from small society lotteries, which are lotteries where proceeds are small enough to allow them to be registered with a local authority, rather than requiring a licence from the Gambling Commission.

# Review of society lotteries advice: Phase 1 and 2

This paper sets out the outcome the Commission's review of the advice given to DCMS in 2015 (Phase 1) and 2016 (Phase 2) regarding Society lotteries covering the following questions:

## Phase 1

- 1 How often to review caps in the future and whether the Commission should publish information on the annual turnover, single draw size and maximum prize awarded by individual society lotteries?
- 2 Allowing lotteries to hold large<sup>3</sup> and small lottery licences simultaneously.
- 3 Showing the information about the proportion of lottery receipts given to good causes, distributed in prizes and used in operational expenses on each ticket and how best to improve how transparency information is made available to the public, including through publication on the Gambling Commission website.
- 4 Allowing private sector companies to run lotteries on behalf of good causes.
- 5 Allowing societies to run lotteries on behalf of other societies.
- 6 Assess Camelot's proposals (as noted by the Select Committee) aimed at improving the clarity of marketing around lottery-like betting products and whether betting on lotteries should be banned.
- 7 Conduct a review of the process for applying for a lottery licence to ensure that it does not provide unnecessary burdens on new applicants.

## Phase 2

- 8 Raising the current limits on sales and prizes for small and large society lotteries and to what level?
- 9 Re-introducing an expenses cap for the largest lotteries at 35%.  
Whether the minimum contribution to good causes should be reviewed and at what level this should be set?  
Whether the largest lotteries should pay 12% lottery duty if they do not return 32% of proceeds to good causes?
- 10 Introducing a separate class of umbrella lotteries with separate limits on individual draws, annual sales and prizes and how best to structure such a class, for example through setting limits on prizes, limiting the number of lotteries that can join together or stipulating different limits on the constituent lotteries.
- 11 Spreading the 20% admin requirements over an extended period, for example one year or three years?

It takes account of our most recent data and provides information about where there have been changes or progress in the sector or any regulatory changes related to any of the recommendations made previously. At DCMS' request we have particularly focused on issues related to sales and prizes, including those related to umbrella schemes and issues of transparency to consumers (see sections 3, 8 and 10).

For our full views, please refer to the documents provided in October 2015 and January 2016.

### **1 How often to review caps in the future and whether the Commission should publish information on the annual turnover, single draw size and maximum prize awarded by individual society lotteries**

- 1.1 We still consider that triennial reviews are not necessary, and suggest that trigger points from data collected by the Commission could be used to flag the need to consider a review. As suggested within our advice, we have consulted on the introduction of a number of new data points for lotteries.

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<sup>3</sup> See Appendix 1 for definitions and information regarding multiple permissions.

These will allow us to capture data about the type of lottery promoted, the single top prize awarded and whether the lottery is part of a branded lottery scheme. This will provide more granular data moving forward from November 2017, enabling us to be better equipped to identify trigger points for discussions on legislative reform. These additional data points have resulted in the Commission developing a new lottery reporting system, with enhanced system reporting so alerts will be automatically raised when individual operators reach 90% of either the individual or annual proceeds limits.

## **2 Allowing lotteries to hold large and small lottery licences simultaneously**

**2.1** Our position remains the same. We are clear that simultaneous permissions is not the key consideration to increase flexibility for new products, would be an onerous change to make and ignores flexibility already within the framework. We also continue to be of the view that a more efficient way of allowing the stated aim of creating greater flexibility for the sector to achieve higher levels of fundraising would be to raise the annual proceeds cap. This could have the dual outcome of allowing society lotteries to raise more money for their good causes, whilst retaining some protection for the National Lottery by setting any cap at a level consistent with that.

## **3 Showing the information about the proportion of lottery receipts given to good causes, distributed in prizes and used in operational expenses on each ticket and how best to improve how transparency information is made available to the public, including through publication on the Gambling Commission website**

**3.1** Our position remains largely the same and as set out in our previous advice, in that we still consider the onus should be on the industry to demonstrate transparent promotion of lotteries, as opposed to the Commission acting as an information hub. Whilst we still consider it should be the operators displaying information to customers, we are moving forward with plans to require them to do so as part of their licence requirements, rather than relying on best practice within the sector. We have recently consulted on proposals to introduce a new social responsibility (SR) code. This would require all society and local authority lottery operators to annually publish the percentage of total proceeds given to the good causes; or, in the case of local authorities, used in accordance with the powers they have to incur expenditure. This consultation closed on 30 September 2017.

**3.2** Whilst this proposal is less than was recommended in the Select Committee report published in 2015, it aligns with the principles set out in the Act to permit societies and local authorities greater freedom on the proportion of proceeds allocated to expenses and prizes provided a minimum of 20% of the proceeds of each lottery are allocated to good causes. This new requirement intends to provide greater transparency to consumers on how much of their lottery 'pound' is spent directly on the good cause. Consumers are familiar with this method of transparency when purchasing charitable goods such as Christmas cards, and so adopting an approach akin to this is felt to be something consumers will easily identify with when making their lottery choices. It also allows for the fact that society lottery operators are often unable to determine in advance the exact proportion that will be returned to the good cause.

## **4 Allowing private sector companies to run lotteries on behalf of good causes**

**4.1** Our position remains the same regarding the possibility of establishing a relatively light-touch regime for existing private sector companies. We continue to consider that it would be inappropriate to set up such a scheme without regulatory oversight. We consider this would need to be at a similar level to that of the charity/good cause sector as it remains unclear why wider industry would be inherently less risky. We remain of the view that the cost and resource required to create and maintain such a framework may well be disproportionate to the benefit.

- 4.2 Critically, there are already many avenues that provide businesses with the opportunity to utilise their skills and resources to assist the lotteries sector to raise funds for good causes. The Commission is producing further guidance to the private sector on how they can support good causes.

## **5 Allowing societies to run lotteries on behalf of other societies**

- 5.1 As set out in our previous advice, this is already possible and undertaken under the current legislation. The society simply has to be transparent to the consumer about the good cause(s) it is raising money for. The Commission is producing further guidance to the sector on how they can support other good causes and charities, alongside guidance to the private sector (Section 4, above).

## **6 Assess Camelot's proposals (as noted by the Select Committee) aimed at improving the clarity of marketing around lottery-like betting products and whether betting on lotteries should be banned**

- 6.1 Our position remains unchanged, we remain of the view that taking account of the regulatory work already undertaken and that which is ongoing to address clarity; and the lack of evidence of impact on the return to good causes, it would still be unnecessary and disproportionate to introduce either a ban or reclassification of bets on the outcome of all lotteries. We have given further advice on the related matter of restricting the ability to bet on the outcome of EuroMillions, which has already been consulted on separately by DCMS.

## **7 Conduct a review of the process for applying for a lottery licence to ensure that it does not provide unnecessary burdens on new applicants**

- 7.1 Our position remains unchanged. The Commission regularly reviews regulatory requirements and, where it is seen to be appropriate and proportionate to the level of risk, seeks to reduce the regulatory burden by removing certain requirements from gambling sectors.

## **8 Raising the current limits on sales and prizes for small and large society lotteries and to what level**

### **Summary**

- 8.1 In our original advice, our recommendations at that time took a cautious approach, with a view to permitting more flexibility for fundraising in the society lottery sector, maintaining the space in which the National Lottery operates and allowing us as the regulator and Government the ability to monitor the impact of these low level changes, and review them as required. This position remains unchanged.
- 8.2 As we outlined before, we consider the question for small society lotteries is somewhat different, given the differing regulatory regime and the lack of clamour for change. Our analysis showed that change would not have a significant impact in terms of those affected and that there is risk in placing more lotteries in the 'small' sector. The capacity (as captured by our survey of local authorities in 2015 and detailed in our original advice) for regulation at a local level is also an important point. If DCMS remains minded to make changes to the threshold, then it would be helpful to appreciate the level of risk that is considered acceptable, this will leave the Commission better placed to provide advice on appropriate limits.

- 8.3** The strategy we adopted in addressing the question with regards to large society lotteries remains the same and continues to be informed by two important factors. Firstly, DCMS has set the context by explaining its objective to ensure that any changes safeguard against the risk of detrimental impact on the National Lottery's ability to raise funds for good causes, whilst at the same time ensuring that returns to society lottery good causes could be maximised and that regulatory regimes should not be overly burdensome. Secondly, at the time, the available evidence base that had informed our advice was poor, in that there is little evidence from which it was possible to draw accurate predictions about the likely impact of specific changes to proceeds and prize levels. In our current review, we have seen no evidence that is persuasive in causing us to change our position, although caveats have been made with regards to the impact any large-scale changes to proceeds would have, as there is little research or data available globally to use as a comparator.
- 8.4** Further to that, we've now set out a fuller picture around proposed limits, this could help to allay concerns about not creating further ability for society lotteries to raise funds. The individual limits proposed do appear as (and are) only a small increase, but coupled with an increase to the aggregate proceeds that may be raised by an individual society to £100 million in a year, should create the ability to raise more funds, offer slightly higher prizes (if proceeds allow); whilst maintaining the distinction between society lotteries and the National Lottery that it is the stated aim to protect.
- 8.5** Although there is little evidence of 'harm' to the National Lottery at the current prize level, there is also not a strong evidence base that can be called upon to assess how any large increases might impact. Equally we do not have research to indicate how increasing prize limits might impact the society lottery sector. Although to date, we have not seen large prize awards (other than for rollovers) have a positive effect on lottery growth. In fact, some societies have demonstrated that changes to their schemes to reduce the maximum prize awarded has had no detrimental impact on the levels of ticket sales.
- 8.6** A key distinction of the National Lottery from society lotteries is the ability to offer 'life changing' prize amounts and permitting a £1 million prize for society lotteries may impact that in a way that cuts across the stated policy aims. For example, this could create (if society lotteries were able to grow to the appropriate scale to support the offer of that level of prize) direct competition for the £1 million raffle that is a key National Lottery product; competition that could (and is likely) to come from the umbrella brands that elsewhere proposals are looking at options for limiting further growth of.
- 8.7** There is also the possibility that allowing a £1 million prize for society lotteries creates a product that has greater potential to compete with the National Lottery, because of the affinity consumers may have with a specific good cause. Currently the differing proposition for the consumer is the level of prize that the National Lottery is able to offer. However, if that gap narrows, it is possible that more consumers may choose to spend their money on the product where they can not only choose the beneficiary, but may also win a life changing amount. Whilst we are uncertain of whether this may occur, it seems reasonable to be cautious if the intention is to continue to protect the space in which the National Lottery operates. As such, we've suggested a precautionary approach to the individual prize limit, and elsewhere in our Phase 1 advice have set out the ability to review those limits in future, based on monitoring and developing a further evidence base.
- 8.8** On a practical point, raising the limit to £1 million, doesn't appear to help the sector particularly at its present state (although noting that this is a suggestion to create growth); as the ability to offer that level of prize (whether donated or directly from proceeds) is still set by the percentage of proceeds the Act permits to be given over to an individual prize or to £25,000, whichever is the greater. At present that is 10%, even if we doubled that to 20% (and raised the individual proceeds limits to £5 million) the majority of lotteries would be unable to reach the levels of proceeds required. Even the largest do not currently do so (taking account of a doubling of the percentage limit).

The percentage increase to allow an individual prize of £1 million, would have to be quite substantial to achieve that in the current market.

- 8.9** Alongside that, the aggregate annual proceeds limit also impacts the amount that can be offered as a prize; as when coupled with the frequency of draws it essentially limits the individual proceeds and therefore the individual prize that can be offered. For example, if we raised the aggregate to the suggested levels (£100 million) and an operator were to run a weekly draw, those weekly proceeds would be capped at around £1.92 million per week in order to avoid a breach of the aggregate limit. At the current 10% proceeds cap only a £192,000 max prize could be paid out; you would need to increase the prize percentage to over 50% in order to offer a £1 million prize. This illustrates that taking a precautionary approach at the moment, won't inhibit the sector in the short term while we assess the impact of the proposed lower level changes; and that, coupled with the aggregate limit increase, will give them scope for further growth. Growing the sector to a point that they can offer £1 million prizes will take time (whether or not legislation is adapted to a reasonable extent to allow it). Providing a limited increase now will allow us to use that time to measure the impact, whilst providing more flexibility for fundraising. The limits can then be reconsidered at a point where the risk of doing so is better understood and the market indicates it is required.
- 8.10** Looking at legislative reform, and taking account of the above, it appears that to introduce a £1 million prize that could be immediately offered by society lottery operators, significant changes would need to be made to the primary legislation. Currently Section 99(4) of the Act sets out the proceeds and prize limits and intrinsically links the value of the prize to a percentage value of the total proceeds. Either the percentage cap, or the link between proceeds collected and size of prizes would need to be removed. This does not appear to be a favourable option, given the pressure elsewhere on the parliamentary timetable; the fact that the majority in the society lottery sector are not in a position to offer this level of prize and that we are uncertain of the likely impact.
- 8.11** For these reasons we continue to propose changes to caps to individual large society lotteries that are relatively minor, with recommendations that the effects of these changes should be monitored to ensure that there are no unintended consequences.
- 8.12** Therefore, our original proposals, as outlined in the Executive Summary, remain unchanged in that we continue to recommend that (for large society lotteries) the:
- prize percentage limit remains the same (10% of individual draw proceeds) and the prize limit that does not take account of proceeds remains the same (£25,000)
  - individual draw limit is raised by a limited amount, from £4 million to £5 million, which would also have the impact of raising the maximum individual prize limit to £500,000 (dependent on ticket sales)
  - aggregate proceeds limit is raised to the level suggested by lottery stakeholders, from £10 million to £100 million, and that
  - the impact of these changes is monitored.
- 8.13** As noted above, we consider that the suggested changes would achieve the stated aims of DCMS and the Select Committee of allowing greater flexibility for all society lotteries to raise money for good causes, whilst maintaining the protection of the unique space in which the National Lottery operates.

## Detail

- 8.14** This section explains more recent data to support our previous advice with regards to:
- The current position for large society lotteries, including data on the number of lotteries close to the current limits, and how any changes could be achieved
  - The benefits and risks of change to large society lottery limits, including impact on the National Lottery
  - The current position for small society lotteries, including data on the number of lotteries who could be affected by changes to the current limits and the benefits and risks of change.

### Current position – large society lotteries

- 8.15** The current limits on proceeds and prizes for large society lotteries are:

**Table 1: Current limits**

What is limited?	Amount
Individual draw proceeds (ticket sales)	£4,000,000
Aggregate draw proceeds in a year	£10,000,000
Maximum individual prize	£25,000 or 10% of the proceeds of the individual draw (permitting a maximum prize of £400,000)

- 8.16** In the first phase of our advice to DCMS we proposed that certain triggers could act as a prompt to review the limits. These would include taking account of the number of societies who were reaching or had reached the limits that are currently in place. Changes to the Commission's lottery reporting system will enable more efficient monitoring of the size of individual and annual limits, as well as the size of the top prizes awarded and the number of lotteries that are promoted as part of a branded or umbrella lottery scheme.
- 8.17** At the time of the previous advice, we advised that having reviewed the available data on those trigger points, it was apparent that unlike in 2008, there were a number of operators who were close to (and in one case had exceeded) the annual limits put in place. Having reviewed more recent data it is clear that this trend is continuing (Table 3), with more societies growing to a scale that pushes against the limits. The sections below provide an overview of the current position, from the data we have available.

### Individual and aggregate proceeds

- 8.18** Our data shows that only a small number of lotteries come within 20% of the individual proceeds limit for large society lotteries, with only 11 draws in the six years until March 2017 falling within this bracket. In 2016 five societies ran individual draws that came within 20% of the £4 million limit. The average proceeds collected from a lottery was just over £41,000 in 2016-17 compared to just over £26,000 in 2011/12 (those that run relatively small lotteries as well as the largest branded lotteries obviously impact on this figure).

**Table 2: Individual limits**

Individual limits	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17
# individual draws	11,475	12,462	12,900	13,137	13,682	14,281
# operators running lotteries	440	442	438	428	436	432
# draws within 20% of individual £4m limit	1	0	3	2	5	0
% draws within 20% of individual £4m limit	0.01%	0.00%	0.02%	0.02%	0.04%	0.00%

**8.19** In terms of the annual limits, the data reveals that there is an increasing number of operators who now sit within a threshold of 20% of the current £10 million for total proceeds, and although it only applies to around 6% of active operators, this number has been increasing since 2011. In 2016, 27 societies ran lotteries which – per society – collectively came within 20% of the £10 million annual limit.

**Table 3: Annual limits**

Annual limits	2011	2012	2013	2014	2015	2016
# operators within 20% of annual limit	-	3	2	9	15	27
% operators within 20% of annual limit	0.00%	0.67	0.46	2.10	3.42	6.14

Source – Lottery returns (2011 to 2017)  
Data only relates to large society lotteries

**8.20** Ten societies were operating within 10% of the annual limits in 2016 and there are already seven operators in this bracket in the first quarter of 2017. Note this is a combination of a number of national charities; some members of an umbrella scheme and some societies who operate both their own schemes and as part of umbrella lotteries. Therefore, a variety of lottery operators are contributing to these figures and not limited to just large umbrella lottery members.

**8.21** Whilst the number of individual lotteries approaching the limits is relatively small, there is an upward trend of societies pushing against the maximum proceeds permitted annually as societies look to securing more funding through lotteries.

**8.22** It is also worth noting that when a society reaches the annual proceeds threshold they may decide to restructure, splitting to form multiple distinct societies each holding a licence, this enables each society to raise up to the maximum annual proceeds limit for each society, meaning that overall the good cause has the ability to continue fundraising to a higher level through lotteries. These newly formed entities will not as yet reach the ‘trigger’ levels we would look at within our data and so the above data alone does not give the full picture of what is happening within the sector.

### Maximum prize

**8.23** Although we will be collecting this data point from November 2017, we do not currently collect information on the individual maximum prize offered, and so cannot provide a definitive breakdown of the number of lotteries reaching the limit. However, given the figures above, it appears that although some societies are reaching the proceeds limits, generally the amount spent on prizes remains low in all but the largest schemes (normally those run under an umbrella brand). For most societies, people participate because of an affinity with the good cause, and high prize levels are considered inappropriate by those participants.

**8.24** For further details of current statistics relating to the breakdown of proceeds please see Appendix 2.

### Evidence of impact on the National Lottery

**8.25** Relaxing the limits on prizes or relaxing the limits on proceeds would have the effect of enabling society lotteries to offer larger prizes to their players although little evidence is available from which it is possible to draw accurate predictions about the impact of changes on the National Lottery. Research conducted for the Commission draws similar conclusions and the Commission recently provided this report to DCMS.

## **Benefits and risks of changes to the limits - Large society lotteries**

- 8.26** The Commission remains of the view that removing the limits placed on the proceeds and prizes of large society lotteries poses no regulatory risks to the objectives of the Gambling Act 2005.
- 8.27** However, given the Government's stated aims of maintaining and protecting the space in which the National Lottery operates there is a risk that substantial changes to some of the limits could have an impact.
- 8.28** The Commission is still of the opinion that raising or removing the annual aggregate proceeds limits alone should not have the same potential impact on National Lottery sales. This would be a way of achieving both the Select Committee's and DCMS' aims of ensuring a greater return to good causes across the lottery sector and increasing flexibility for society lotteries to raise funds. Society lotteries would have the opportunity to run more lotteries, which may increase competition, but retaining or permitting only a minimal increase to individual prizes and individual draw proceeds, would ensure that they continue to operate in their own space and do not pose a threat to National Lottery sales. It may also have the benefit of reducing the need for charities and other good causes to operate multiple (distinct) society lotteries, and therefore reduce administration and potentially cost.
- 8.29** As mentioned in our previous advice, historically some society lotteries have grown to meet the limits placed on them, certainly in recent years as the sector has attracted larger charities, with broader reach and bigger budgets. Whilst this is positive for the good causes supported by those lotteries (as fundraising ability increases), whatever limits are put in place will need to take account of that fact in order to reduce the risk of impact on the National Lottery. Although such a scheme would require substantial investment and retail presence, they may have the benefit of being associated with a specific good cause, which could increase the potential risk to National Lottery sales and therefore returns to good causes.

## **Current position - small society lotteries**

- 8.30** In our original advice to DCMS we provided data regarding how many societies were currently licensed by the Commission, but could – due to lottery proceeds levels – be registered instead with their licensing authority (LA). We also outlined potential risks to increasing the size and scale of the registered lottery market in terms of LA resources to manage potential breaches. There are no changes to our position on LA registered lotteries, but have revisited the data on the number of societies who could potentially fall out of the licensed environment should the small society lottery limits be increased.

## **Impact of changing the limits for small society lotteries**

- 8.31** At the current threshold between LA registration and Gambling Commission licence, the following table shows the numbers of draws, which would be captured by any potential increase to small society lottery limits (ie could fall from the requirement of having a Commission licence to an LA registration). Note that this data relates only to those draws currently operated under a Gambling Commission licence.

**Table 4: Changes to individual draw thresholds**

(2016/17) Raising the individual draw threshold <sup>4</sup> to ...	to £25k	to £30k	to £40k
# Individual draws in scope*	11455	11590	12319
% of total individual draws*	80%	81%	86%
Average extra per local authority	30	31	32

Source – Lottery returns (2016 to 2017)

\*Figures represent the number or proportion of draws that would potentially shift from being offered under an operating licence, they do not show the total number or percentage of draws that would fall to be a small society lottery as that data is not available.

- 8.32** This data shows that the vast majority of individual draws (licensed as large society lotteries) generate total proceeds of less than £20,000 (over three-quarters by number for each of the last four years), although this number has reduced slightly since 2011 as a result of work undertaken by the Commission to persuade some operators that they didn't require a Commission licence.
- 8.33** Increasing the individual draw threshold above the current figure of £20,000 would have the knock-on effect of increasing the number of societies, which would require an LA registration and correspondingly reduce the number of which required a Commission licence. With three scenarios outlined within the table above (raising the threshold to £25k, to £30k and to £40k), each row shows the number of draws that would fall into the scope of LA registration should the limit be changed. The table below provides the same picture, but based on individual operators and the annual threshold rather than draws.

**Table 5: Changes to annual draw thresholds**

(2016-17) Raising the annual draw threshold <sup>5</sup> to ...	to £300k	to £400k	to £500k
# operators in scope	164	196	224
% of all operators	38%	45%	52%
Average extra per Local Authority	0.46	0.54	0.62

Source – Lottery returns (2016 to 2017)

\*Figures represent the number or proportion of operators that would potentially shift from being offered under an operating licence, they do not show the total number or percentage of operators that would fall to be a small society lottery as that data is not available.

### Benefits and risks of changes to the limits - Small society lotteries

- 8.34** The Commission's opinion of the question of increasing the limits for small society lotteries remains unchanged, and we continue to see no evidence to suggest these limits are currently restricting or stifling growth of lotteries at the lower level. The number of societies who could potentially fall out of licensed regulation and instead be regulated by local authorities, based on 2015-16 lottery reports, is between 164 and 224 (38% – 52% of all operators), dependent on the level of changes made.

<sup>4</sup> These figures assume that all draws below the threshold would transfer to LA registration, in reality some of these will trigger the annual proceeds threshold so would still require a Commission licence.

<sup>5</sup> These figures assume that all operators below the threshold would transfer to LA registration, in reality some of these will trigger the annual proceeds threshold so would still require a Commission licence.

## **9 Re-introducing an expenses cap for the largest lotteries at 35%**

**Whether the minimum contribution to good causes should be reviewed and at what level this should be set**

**Whether the largest lotteries should pay 12% lottery duty if they do not return 32% of proceeds to good causes**

**9.1** There has been no change in the Commission's position. We continue to consider that while in each instance the application of the proposals to the current environment would bring theoretically an increased return, there are a range of potential unintended consequences that should be considered before looking to implement such change. These questions were brought together as they follow a common theme of seeking to increase the rate of return from society lotteries to good causes, from the three different perspectives. A review of our latest data does not provide anything that changes our view. This data is provided in Appendix 2.

## **10 Introducing a separate class of umbrella lotteries with separate limits on individual draws, annual sales and prizes and how best to structure such a class, for example through setting limits on prizes, limiting the number of lotteries that can join together or stipulating different limits on the constituent lotteries**

**10.1** There has been no change in the Commission's position. Our original advice responded to the concerns raised around the larger umbrella brands. That, as we understood, were based around the appropriateness of such schemes, given the original policy intention of society lotteries. This is with particular regard to the transparency of funds processed, especially expenses and how this may link with connected companies. There is also concern with regard to the potential damage caused to National Lottery returns to good causes.

**10.2** Since our original advice was provided, the Commission has consulted on proposals for a new social responsibility (SR) code requiring all lottery operators using branded lottery schemes<sup>6</sup> to ensure the lotteries are promoted separately, and it must be clear to a participant in the lottery through the marketing and advertising, which society lottery they are being asked to participate in. This also applies where the brand is being used in promotion of the prize or beneficiaries.

**10.3** It is worth noting the context of umbrella brands within the society lottery sector as things currently stand that the two largest schemes account for nearly 61% of lottery proceeds from a sector that has grown generally at the same time.

**10.4** While views vary, our position remains that on our assessment of the evidence available, there has not yet been a significant impact on the National Lottery from the schemes. It is difficult to predict the future risk on the National Lottery, noting there have been no new entrants of significant size since the Health Lottery (THL) in 2011 (although People's Postcode Lottery (PPL) has grown significantly in that time).

**10.5** In our original advice we suggested a number of changes that could be examined, notwithstanding the transparency measure that the Commission has consulted on. It is difficult to predict the future growth of umbrella branded lotteries. As referenced in our original advice, the cap on prizes and the resources required to set up and market umbrella schemes is prohibitive to most interested parties. As set out in previous advice, DCMS may wish to consider introducing measures, which look to limit the risk of new schemes emerging in the future rather than limiting the existing schemes already in operation.

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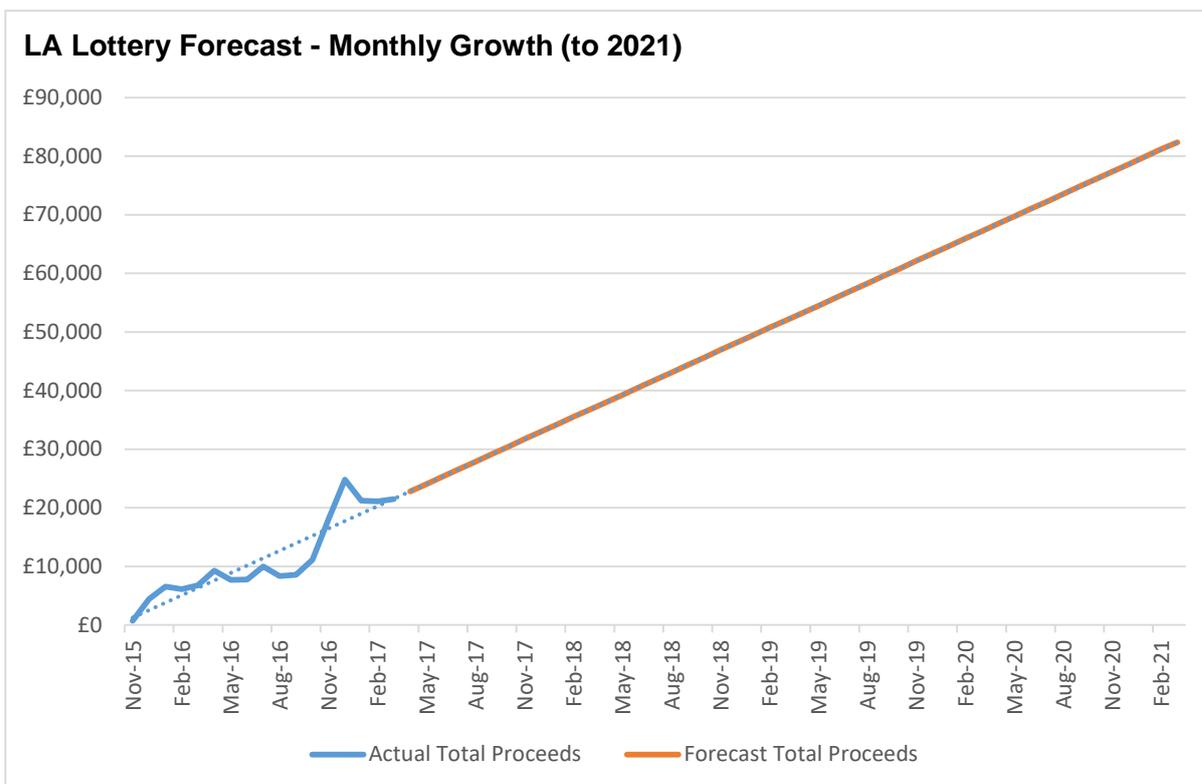
<sup>6</sup> In this context, the consultation regards a branded or umbrella lottery scheme to be a scheme whereby multiple societies promote lotteries under a common brand name or image, either on rotation with other societies or as a regular occurrence for that single society.

Whilst some of these measures suggest the imposition of additional licence conditions, it is important to note that such measures can only be imposed by the Commission with regard to the three licensing objectives.

- 10.6** Whilst the interpretation of the Act is ultimately a matter for the courts, the Commission issued advice and guidance in 2011 to operators on how to ensure lotteries promoted as part of branded or umbrella schemes are conducted in a compliant manner. This advice sets out some of the indicators to which the Commission has regard in determining whether a particular scheme is being properly promoted as a series of separate lotteries or is in reality a single lottery. These indicators may also be relevant, in appropriate cases, to the Commission's decision whether to grant an operating licence.
- 10.7** The society lotteries consultation opened in July 2017 contained proposals to introduce a new licence code, compelling operators to comply with these indicators as well as ensure any marketing of beneficiaries in receipt of funds derived from a branded lottery favour the name of the promoting society and not the branded scheme.
- 10.8** It should be noted that the Commission intends to review our 'branded lotteries' advice once the consultation on society lotteries is concluded, taking into account any changes to regulation and also accounting for changes within the lottery sector itself, particularly with regards to technological advancements such as lottery entry via text message, and the growth of the mobile platform.
- 11 Spreading the 20% admin requirements over an extended period, for example one year or three years**
- 11.1** Our position remains unchanged. The Commission is not aware that the current requirement on society lotteries to return 20% from each lottery from the first lottery onwards has deterred charities or other non-commercial organisations from entering the society lottery market or developing new lottery products.

## 12 Emergence and growth of local authority lotteries

- 12.1** The Act permits local authorities to run lotteries to raise funds to support any purpose for which they have power to incur expenditure. Any local authority intending to promote a lottery must hold a lottery operating licence issued by the Commission.
- 12.2** Since August 2016 the Commission has seen a slow but steady rise in the number of local authorities applying for a licence to run their own lotteries (prior to this only one local authority was licensed by the Commission). As at 31 August 2017, the Commission has issued 17 lottery operating licences and a further 10 lottery applications have been received from other local authorities at the time this advice was written. Some of these local authorities have appointed licensed External Lottery Managers (ELMs) to make the arrangements for their lottery on their behalf whilst others are running the lotteries themselves.
- 12.3** LA lotteries are still new and therefore relatively small at present, with most having weekly proceeds of less than £2,000. Cumulatively, all licensed LA lotteries have proceeds of approximately £21,000 per month in 2017. Returns to good causes is at least 50% and in some cases 65%.
- 12.4** Whilst the collective proceeds for 2016/17 was only £169,673 (less than 1% of total lottery proceeds), the potential is there for growth across all 380 authorities, albeit is still currently an insignificant amount compared to society lottery and National Lottery proceeds. We estimate gross proceeds of over £900,000 per year (equating to approximately £80,000 per month) could be achieved based on the growth pattern to date of existing lotteries and the current rate at which new entrants are coming into the market.



- 12.5** Most LAs use the funds from their lotteries to provide grants to local not-for-profit organisations, thus freeing up finances to use elsewhere, or to fund facilities that would otherwise be cut or reduced.

## Appendix 1: Society lottery definitions, including multiple licence restrictions

- A1.1** In GB, society lotteries can only be run by non-commercial entities. Section 19 of the Act states that a society is non-commercial if it is established and conducted:
- for charitable purposes
  - for the purpose of enabling participation in, or of supporting, sport, athletics or a cultural activity
  - for any other non-commercial purpose other than that of private gain.
- A1.2** Those entities are called societies within gambling legislation and require either a registration from a local licensing authority (small society lottery) or a licence from the Commission (large society lottery) dependent upon proceeds. As follows:

### Annual aggregate proceeds (ticket sales)



### Individual draw proceeds (ticket sales)



Key:

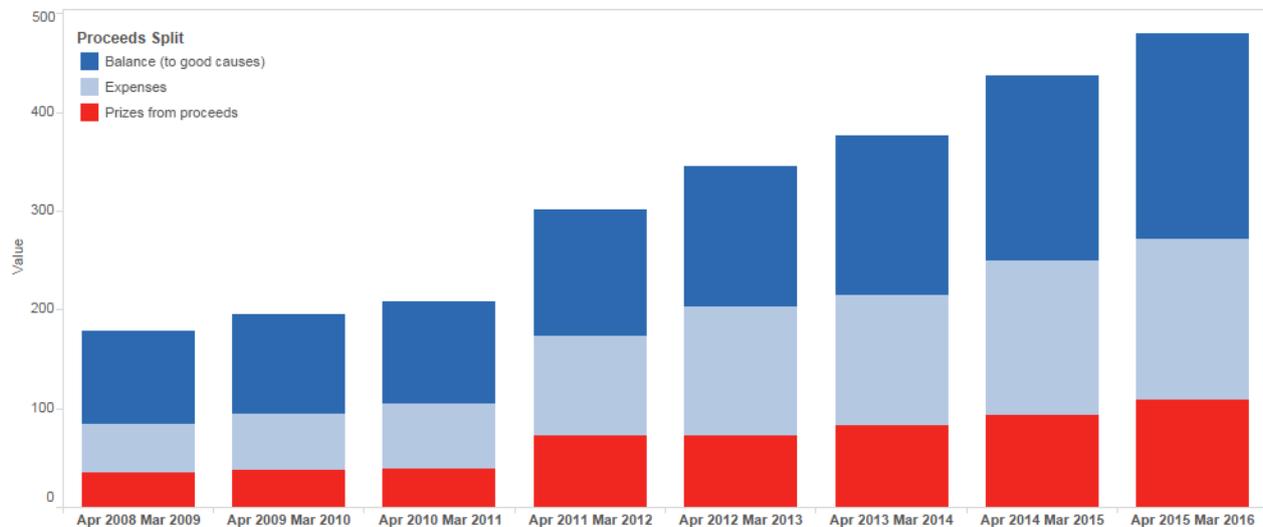
- Small Society Lottery, requires registration with local licensing authority
- Large Society Lottery, requires a licence from the Gambling Commission

- A1.3** Schedule 11, part 4 of the Act sets out those thresholds and states that a society lottery is a large lottery if the arrangements for the lottery are such that total proceeds (ticket sales) from it:
- in a single society lottery exceed £20,000, or
  - the proceeds in cumulative lotteries promoted in the same calendar year have aggregate proceeds in excess of £250,000.
- A1.4** This and other parts of the Act mean that a single society cannot hold multiple permissions, other relevant sections include:
- section 258 states that a person commits an offence of promoting a large society lottery unless they hold a lottery operating licence issued by the Commission or the lottery is an 'exempt lottery', which includes 'small society lotteries'
  - schedule 11, parts 4 and 5 set out the requirements for small society lotteries including the requirements for a registration with a local authority
  - schedule 11, part 4 (5) states that if a society promotes a lottery, which is a large society lottery, then every subsequent lottery it promotes in that year and in the following three years will also be a large lottery and will require the society to hold a lottery operating licence issued by the Commission.

## Appendix 2: Additional large society lottery data

**A2.1** The Commission publishes bi-annual Industry Statistics in both Word and Excel formats to ensure they are widely accessible and reusable. In May 2017, half-yearly report of headline findings showed an increase in the balance to good causes, and a decrease in the proportion of proceeds raised by ELMs.

Society Lottery Proceeds



**A2.2** Only a small number of society lotteries licensed by the Commission have proceeds of more than £5 million per year (ie more than half of the maximum proceeds limit of £10 million) – 16 in 2015 and 36 in 2016. Some societies have restructured into multiple societies under a single charity, which is likely to slow this growth down in 2017 and 2018.

**A2.3** In 2016, 69 charities operated lotteries that returned less than 25% of their proceeds to the good causes – a decrease from 79 in 2015.

### ELMs and branded schemes

**A2.4** Some brand schemes, where multiple societies combine under a single lottery brand can result in those brand lotteries as a whole exceeding the annual aggregate maximum total proceeds but the individual societies participating under those brands are all well below the maximum limit, as currently allowed.

**A2.5** Since the Act came into force in September 2007 the number of licensed ELMs has increased from ten to nearly 40. In 2008/09 the proportion of lottery proceeds ELMs were involved in raising was £36million (20% of total proceeds). This increased to £368million (69%) in 2015/16. Whilst the percentage returned to good causes for lotteries managed by ELMs may sometimes be lower than for lotteries run by societies themselves, the actual amount returned is also far higher – and umbrella schemes amount to a sizeable chunk of the society lotteries market, returning an important revenue stream to good causes.

**A2.6** Umbrella schemes remain relatively small and differentiated by comparison with the National Lottery. Lower jackpots, coupled often with a single-cause association constitute an important difference in the player experience. Two studies on competition between the National Lottery and society lotteries followed the introduction of THL in 2011. Neither found that the entry of THL had large effects on the Lotto sales, with the maximum estimate of impact at 2.8% weekly sales at THL's height of popularity.

## **Branded schemes and the National Lottery**

- A2.7** Previously research has focused on comparisons between the National Lottery and the Health Lottery, so no comparison has been made with other branded schemes.
- A2.8** As the scope of other umbrella schemes is somewhat different, comparisons with the National Lottery are more difficult. Most are subscription only lotteries and not available through retailers. Membership of the scheme may be through post, telephone or online. Therefore, the availability to the average consumer is more limited. However, as subscription only schemes, they may not be affected by external factors such as the National Lottery rollovers influencing consumer choices.

**Published June 2018**

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## Society lotteries advice

Phase 1, October 2015

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### Introduction

You have asked the Gambling Commission, in its capacity as the Secretary of State's statutory adviser on gambling and its regulation, to provide advice on a range of matters relating to the Culture, Media and Sport Select Committee's report arising from its inquiry into society lotteries. In particular, the Department has set out two areas, one relating to sales and prize caps and the other to further suggested reforms. As agreed, this response forms an interim report and as such, has not yet been considered in detail by the Commission's Board. It is important to note that as further parts of the request are considered, some perspectives may be subject to change, due to the relationships and potential interplay between certain issues or where further information becomes known as we continue our analysis. We will reflect on that in the final report.

This paper provides advice and sets out emerging thinking in the following areas of the request, agreed with Department officials to form the agreed interim report:

- How often to review caps in the future and whether the Commission should publish information on the annual turnover, single draw size and maximum prize awarded by individual society lotteries.
- Allowing lotteries to hold large and small lottery licences simultaneously.
- Showing information about the proportion of lottery receipts given to good causes, distributed in prizes and used in operational expenses on each ticket and how best to improve how transparency information is made available to the public, including through publication on the Gambling Commission website.
- Allowing private sector companies to run lotteries on behalf of good causes.
- Allowing societies to run lotteries on behalf of other societies.
- Assess Camelot's<sup>1</sup> proposals<sup>2</sup> (as noted by the Select Committee) aimed at improving the clarity of marketing around lottery-like betting products and whether betting on lotteries should be banned.
- Conduct a review of the process for applying for a lottery licence to ensure that it does not provide unnecessary burdens on new applicants.

The questions are dealt with in the order set out in the Department's letter, which explained the request for advice. For each, we have followed a common format. We have provided a short summary of key points related to that section before setting out further detail. In some areas, detail has been moved to appendices to aid reading and provide a focus on the answer to the question at hand.

**Note:** We have mostly kept to the technical definitions of large and small lottery, but where appropriate, have also addressed 'small' large lotteries. See Appendix 2 for expanded definitions.

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<sup>1</sup> Camelot is the operator of the UK National Lottery

<sup>2</sup> Camelot had three proposals, which included extending the current prohibition on bets on the outcome of the National Lottery so that all lotteries were included, reclassifying bets on lotteries as lotteries; and requiring operators offering bets on lotteries to improve the clarity of marketing so that consumers are clear that the product is betting.

# **1 How often to review caps in the future and whether the Gambling Commission should publish information on the annual turnover, single draw size and maximum prize awarded by individual society lotteries**

## **Summary**

- 1.1** The Commission notes that while the Committee was proposing a review of society lottery proceeds and prize limits every three years, the Government was not clear this was necessary, given Commission monitoring.
- 1.2** We agree with the Government that tri-annual reviews are not necessary. The Commission recommends that it identifies trigger points from a variety of data, most of which it already holds. When those triggers were activated, the Commission would review the position in more detail before providing advice to the Government on any action, which may be required at that point. In our view, this is preferable to a triennial cycle since it will provide the Government with greater flexibility to respond promptly to emerging market data which showed that operators were approaching caps.
- 1.3** While the Commission already holds much of the data that would be required to carry out a full assessment (for example, to identify a need for a review of the limits) for large society lotteries, we will need to gather a small amount of additional data, which is already being pursued as part of another existing programme of work.
- 1.4** The development of trigger points and detailed assessment of the caps will always be difficult and should be carried out with care. It is, for example, likely to require wider contextual data, beyond that captured routinely in the course of regulation. This might include, for example, information on public attitudes or diversity of causes supported.
- 1.5** Some of the data, which the Committee proposed that the Commission should publish, would be additional to that currently collected. Our advice suggests that not all of that is required to address the cap limit questions and we think that we need collect only one additional data point, which would strike a better balance between the needs on the one hand to ensure a sound evidence base for making such assessments and regulatory burdens on the other.
- 1.6** The question of publication of data is dealt with at section 3.

## **Detail**

- 1.7** This section explains:
  - The current position in terms of data the Commission currently holds.
  - The view that the additional data requirements proposed by the Committee would be potentially complex to gather and instead proposes one additional data point only – that of the highest prize offered within a draw.
  - Our assessment of the proportionality of a requirement for that data point.
  - The nature of a potential trigger set for monitoring. This includes the proposed additional data point, and other relevant considerations in this area, including notes on interpretation of data.
  - The work that the Commission already undertakes in this area and how we are changing our approach to data analysis to address work around limits.

## **Data currently held**

- 1.8** All operators, regardless of sector, are required to provide regular data on financial (and other) performance in reliance on their Commission licence. This requirement is met through the regulatory returns process, the completion of which is a licence condition for operators and (depending on the size and sector in question) must be made by operators annually in the case of lotteries<sup>3</sup>. In addition, society lotteries are required to submit data about each of the draws they hold within three months of the draw date (known as lottery submissions). Data held and published is identified in full at Appendix 1.

## **Collecting additional data proposed for publication**

- 1.9** At present, the Commission collects a range of data from lottery operators, including annual turnover and granular details on individual draws in terms of the breakdown of proceeds by the amount spent on overall prizes, expenses and the return to the good causes. The Commission keeps data requirements under regular review to avoid placing unnecessary burdens on operators.
- 1.10** The in-depth profile of prize structures on a draw-by-draw basis proposed by the Committee is not currently submitted to the Commission by operators. This requirement would form a new part of the data collected, monitored and analysed by the Commission within the wider regulatory and lottery returns process.
- 1.11** In reality, the provision of in-depth details on the profile of prize structures on a draw-by-draw basis could prove complex and unwieldy for operators because of the large number of potential combinations within prize structures for different draws. Even with the development of a system with the complexity to capture this, our assessment is that the data may add little value to the Commission in assessing issues around whether society lotteries are finding the limits restrictive.
- 1.12** By way of illustrative example, two draws may have identical prize funds in terms of size, although one may share that fund between a relatively large number of small prizes and the other between a relatively small number of larger prizes, with the latter including a maximum prize of 10% of the total proceeds.
- 1.13** With this in mind, we think that there is likely to be value in the collection of a single additional data point, the value of the largest prize offered within the draw. The collection of this data would also support the Commission's assessments of compliance with section 99(4) of the Gambling Act 2005<sup>4</sup> (the Act) while not imposing significant additional burdens on the industry since it is information that is readily available to lottery operators.
- 1.14** In consultation with the industry, the Commission is planning a wider review of regulatory and lottery information returns in 2016 and plans to incorporate this into that review.

## **Further issues to consider about additional data requirements**

- 1.15** We will need to be clear with the industry when we consult on changes to regulatory returns and lottery submissions about the case for the requirement of an additional data point. The change outlined above does result in an additional regulatory burden upon operators. Whilst this may only be a marginal change for larger operators, it may be argued that this will produce a disproportionate impact on smaller operators or those that infrequently run draws.

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<sup>3</sup> Annual regulatory returns are due to the Commission within 42 days of the last day covered by the return for an annual return.

<sup>4</sup> "It must not be possible for the purchaser of a ticket in a lottery promoted in reliance on the licence to win by virtue of that ticket (whether in money, money's worth, or partly the one and partly the other) more than (a) £25,000, or (b) if more, 10% of the proceeds of the lottery"

- 1.16** We consider in this case that the benefits would outweigh any (marginal) increased burden, because of the following factors:
- The additional information required is a single data point for each draw and is one that should be readily available to operators through their existing data collection or management information structures. We assume that it is not unreasonable for operators to already collect this information.
  - Its collection is part of an existing process where the wider infrastructure is already in place so would not require additional training for operators.
- 1.17** We note that this trigger point would not capture those lotteries that offer low prizes but still meet or approach the proceeds limit. This may be the case for operators that rely heavily upon their specific good cause association with customers, from whom there may not be any desire for large prizes.
- 1.18** These operators may consider the constraints on their fundraising to be due to the limits on individual draws and/or aggregate annual lottery proceeds. We will be considering those limits in the caps review section of this work.

### **Potential triggers to instigate review of limits**

- 1.19** We recommend that effective review of caps should come from continual ongoing monitoring informed by a set of trigger points. These trigger points should be identified from a wide set of data, beyond that simply gathered for day to day regulatory purposes.
- 1.20** This should encompass public attitudes towards and engagement with lotteries, diversity of lottery causes supported, diversion of consumer spend from and to the National Lottery and emergence of new business models.

### **Positive impact and caveats of holding additional prize data on triggers**

- 1.21** Information on the number of times that the largest prize has been awarded, derived from the additional data outlined above, may also provide potential triggers such as:
- Total number / percentage of draws where the largest prize has been awarded.
  - Consecutive draws (by the same operator) where the largest prize has been awarded.
  - Number of operators that have offered draws where the largest prize has been awarded.
- 1.22** However, in a market characterised by relatively low prize levels<sup>5</sup> it is also possible using the information currently held by the Commission, to devise potentially more relevant triggers for a potential review, for example:
- The number/percentage of draws characterised by when the total proceeds limit of £4m is approached or reached.
  - The number/percentage of operators characterised by the annual total proceeds limit of £10m being approached or reached.
  - The numbers of licensing applications received by the Commission characterised as umbrella schemes or new societies being managed by an existing licence holder.
- 1.23** The information sources above are (or would be) provided to the Commission by operators and solely reflect macro data on the supply-side of the market. Data to support or challenge a hypothesis about whether society lotteries are finding current limits restrictive could also be demand-side or at the individual customer (micro) level, for example, evidence of frustrated demand from potential customers.

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<sup>5</sup> See *Market advice on the lottery sectors* provided to DCMS by the Gambling Commission (October 2014).

- 1.24** Collecting and validating such demand-side data does come with some sizeable caveats, which potentially preclude use as triggers but would be worth keeping under review. Caveats include:
- If sourced by operators – this approach may lead to variations in quality through potential differences in methodological approach taken.
  - If sourced by the Commission – this approach will have resource implications in order to generate a sufficient response rate to ensure robust conclusions.

#### **Further issues to consider about potential triggers**

- 1.25** At best, any triggers designed to alert that a review is required, which are based on supply-side data could only ever provide a rudimentary indication about what is happening within the society lottery market. We would suggest that care is taken not to rely solely upon them as a source for evidence of how that market is developing.
- 1.26** Care would also need to be taken against unintended consequences or a threshold being seen by operators as a ‘target’, for example, whereby operators within the market could potentially amend their existing prize structures in a way, which would maximise the number of draws, which offer prizes at the maximum levels permitted.
- 1.27** For example, an operator may have a draw where the maximum prize is limited to £50,000, although their current structure may have a top prize of £40,000 and a second of £20,000. In order to reach the threshold required to trigger a review they may chose to change this to a top prize of £50,000 with the second prize of £10,000. Although the total prize fund may not have changed in this case, the second scenario would count towards triggering a review, albeit, that review may not lead to action to change the limits.
- 1.28** As noted above, operators have a three month window within which to provide lottery submissions, this would mean a potential time-lag for any new data submitted.
- 1.29** It should also be considered that there is some indication that operators may enter details of large-scale draws individually, often more quickly than details of others (smaller draws), which are entered in multiple batches. The upshot of this process may be to result in short term discrepancies within the submitted data and care must be taken that triggers are sensitive enough to accommodate this risk.

#### **Work already underway**

- 1.30** The Commission already monitors for compliance purposes operator performance in relation to limits by using regulatory returns and lottery information data it receives.
- 1.31** As mentioned above, we are planning to include in the next review of returns data the requirement for operators to submit the additional data point on the largest prize offered on a draw-by-draw basis, at the same time as they currently submit the granular detail on the breakdown of prizes from proceeds, expenses and the ensuing balance to good causes.
- 1.32** In addition we have recently incorporated into our regular reporting and governance framework lottery indicators such as breaches of the proceed limits and 20% returned to good causes, which prompts action in those cases. In future, we could include new data collected on the number of maximum prizes, which could serve as a monitoring point and prompt for the review of limits.

## 2 Allowing lotteries to hold large and small lottery licences simultaneously

### Summary

- 2.1** The Committee expressed a desire to enable greater flexibility for society lotteries to deliver new products, through holding multiple licences or adjusting the requirement for 20% of society lottery sales to go to good causes. The 20% rule is considered in the next report.
- 2.2** The Commission is clear that simultaneous licences is not the key consideration to increase flexibility for new products, would be onerous to change and ignores flexibility already within the framework.
- 2.3** We also consider that if an additional aim is to allow society lotteries greater flexibility to achieve higher levels of fundraising a more efficient way of doing so would be to raise the annual proceeds limits. This could have the dual outcome of allowing society lotteries to raise more money for their good causes, whilst retaining the protections for the National Lottery by setting any cap at a level consistent with that.
- 2.4** There is already a reasonable degree of flexibility within the current framework for a charity or other non-commercial entity (not the society) to hold multiple permissions to enable new products to be tested. This is already utilised by a number of market participants.
- 2.5** We recognise that this framework may already have the unintended risk of enabling the overarching charities or good causes to circumvent limits on proceeds, contrary to the Select Committee's stated wider aims on those schemes currently perceived to be doing so. This risk is tempered by the requirement that each society managed by a charity or good cause, must be a distinct and separate entity, without overlapping aims and objectives in order to be able to hold a separate licence or registration. This requirement currently provides some protection of the proceeds limit by creating a barrier to simply stacking licences for the same society, whilst enabling an overarching charity to raise more money through lotteries than would legally be possible under a single society. Critically it does not enable any circumvention of the jackpot cap limit.
- 2.6** In terms of being able to trial new products, we see more discussion required around the 20% rule, which has the perception of constraining new products<sup>6</sup>, rather than multiple licence permissions. The Lotteries Council has explained that it has received little feedback from members on the need for multiple licences, although does consider there to be a need to rethink the 20% rule.

### Detail

- 2.7** This section:
- Notes current status and primary legislation required to enable such a change.
  - Comments on the flexibility already within the framework of product development, subject to clarity from societies on what different causes funds are being raised for.
  - Recognises that while a degree of mitigation is in place, this current flexibility could be seen to enable some circumvention of limits in place.
  - Reflects on informal dialogue with the Lotteries Council that does not see any clamour for change from this perspective.

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<sup>6</sup> Noting that this can depend on a society's appetite for running different parts of its activities at a loss, i.e. the lottery return could be at 20% through diversion of expenses costs from elsewhere in the business.

## Background

- 2.8** The current regulatory framework requires a society to hold either a registration with a local licensing authority, or a licence issued by the Commission dependent upon proceeds levels. They cannot hold both<sup>7</sup> or more than one licence or registration.
- 2.9** Changes to primary legislation would be required to enable societies to hold a licence and registration simultaneously. In particular, Schedule 11 part 4 defines the distinction between a small and large society lottery setting out that once certain thresholds are reached a small society lottery must become a large society lottery and requires a licence from the Commission. It also specifies that a lottery promoted as a large society lottery must continue as a large lottery (with a licence) for a minimum of three years.

### Current flexibility

- 2.10** Flexibility within the framework already exists in that charities or other non-commercial bodies may already have more than one society lottery operating licence and a registration, or multiple registrations, with a local authority. This is provided each society is separate and has distinct aims and objectives (for example, raises funds for different regions or different aspects that the charity is related to).
- 2.11** This could be viewed as a means of circumventing the proceeds limits placed on individual societies, but because each society is distinct, it is within the law and the limits, which apply to an individual society, are not breached. It is important to note that this does not enable the jackpot cap to be circumvented<sup>8</sup>.
- 2.12** The Commission also considers that requiring this distinction goes some way to protecting the intentions of the Act by creating a barrier to getting a licence or registration, given there are limits to the number of distinct purposes available.
- 2.13** A number of non-commercial bodies already take advantage of this in order to increase their lottery fundraising. Some of the larger schemes, such as the Health Lottery that operate under an umbrella brand, have prompted concern from Government and the Select Committee, due to the scale they have been able to achieve.
- 2.14** The Commission has previously advised that whilst lawful, schemes such as this could undermine the Government's original intentions in relation to protecting the space in which the National Lottery operates. Advice on options for regulating umbrella schemes will be part of the final report.
- 2.15** Informal feedback from the Lotteries Council (the largest trade association for the lotteries sector) suggests that they agree that the only 'benefit' would be that operators would be able to exceed the current annual proceeds limits. It has been suggested that if the aim is to increase flexibility for new products then many in the industry consider the key barrier to that to be the need to return 20% to good causes immediately or face regulatory action. While as we have noted there are ways of addressing the 20% rule through other activities, there is clearly a perception of an issue here.

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<sup>7</sup> See Appendix 2 for full detail

<sup>8</sup> As each society still operates within the limits placed on prizes and proceeds

### **3 Showing the information about the proportion of lottery receipts given to good causes, distributed in prizes and used in operational expenses on each ticket and how best to improve how transparency information is made available to the public, including through publication on the Gambling Commission website**

#### **Summary**

- 3.1** The Commission appreciates the importance of transparency across all its operators to help consumers make informed decisions. From work we have undertaken on the National Lottery we understand that while there is little evidence that players consistently look at such information, it is important to players that it is there if they need it.
- 3.2** We understand the drive for the Committee's proposal for a consultation on this subject arose in discussions during its inquiry. These centred in particular on the transparency of the Health Lottery's expenses breakdown, rather than as a result of public query or lack of consistency with Charity Law.
- 3.3** The Commission recommends that it is appropriate that the initial onus is on the industry to demonstrate transparent promotion of lotteries, including balance of marketing expenses. This would be as opposed to the Commission acting as an information hub. The industry should be given this opportunity through a targeted consultation, in line with the Committee's recommendations, to ensure a timely focus.
- 3.4** There are issues associated with both information on tickets and publication on the Commission's website such as lack of consistency of information parameters across lotteries, difference in data collection between small and large lotteries, difficulty in forecasting data ahead of the completion of the lottery, additional data requirements and proportionate costing.
- 3.5** We note that the industry itself is considering a new set of guidelines in this area.
- 3.6** The data for large society lotteries is already in place and published in some areas by the Commission. The Commission considers that given the characteristics of the market (relatively low prizes, generally limited distribution and specific good cause association), increased transparency within the market could be better achieved through activities such as encouraging operators to make their own breakdown of prizes, expenses and returns to good causes readily available, including potentially at the point of purchase.
- 3.7** If the purpose is to improve transparency for players, it seems appropriate that this is delivered through operators rather than the Commission, for detailed information. We would agree with the Committee that a consultation, with an emphasis on the operators providing transparency of data to their consumers, would be an appropriate course of action.

## Detail

### 3.8 This section:

- Considers what is published centrally by the Commission currently, within commercial confidentiality constraints and the wide range of issues associated with expanding this activity. These are driven in part by the cost and complexity of data required.
- Reflects on the facility and impact of publishing data on tickets, noting what would need to change and issues arising. In particular, it notes the point that players would only be able to find out the data after they had purchased the ticket and more effort should be focused on point of sale material and other information hubs.
- Notes the work in this area already underway through the Lotteries Council.

### Publication on the Commission's website<sup>9</sup>

**3.9** Regulatory returns data and lottery submissions are submitted by operators in confidence, given its commercially sensitive nature, particularly with reference to Gross Gambling Yield (GGY) or the distribution of total proceeds. The Commission, therefore, does not publish any financial data that would be attributable to individual operators<sup>10</sup>.

**3.10** The Industry Statistics publication is designated as an "Official Statistic" and as such is subject to the Code of Practice for Official Statistics<sup>11</sup>.

**3.11** At present, the Commission collects granular level of information from large society lotteries, which feeds into the assessment against annual caps and individual limits for society lotteries. From this perspective, potentially little would need to change in terms of the data collected from operators holding a lottery licence with the Commission to enable publication.

**3.12** The Commission does not receive data for small society lotteries, or have a process for doing so. In order to acquire the data, we would need to consult all local authorities to find out the format of the data held, the scale of that data and their capacity to share it. The Commission would also need to develop and implement a system for receiving and storing the information.

**3.13** The publication of such data would potentially require the development and maintenance of a new database, which would need to be built around the current IT infrastructure<sup>12</sup> used by the Commission within the regulatory returns and lottery information process.

### Issues to consider

#### 3.14 Use as comparison tool:

- The society lottery market is characterised<sup>13</sup> by low ticket price, slow draw frequency (often weekly or monthly), in person distribution or subscription entry (as well as some retail distribution), low prize levels and a specific good cause association.

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<sup>9</sup> See Appendix 1 for data held and currently published

<sup>10</sup> The Commission treats all such information as confidential and will only disclose that information to people outside the Commission where it is necessary to do so in order to carry out the Commission's functions or where the Commission is required by law to disclose the information. As a public authority, the Commission must comply with the requirements of the Freedom of Information Act 2000 and must consider requests for information made under the Act on a case by case basis. However, the Commission would not normally expect that the disclosure of commercially sensitive information would be in the public interest.

<sup>11</sup> This Code of Practice places constraints on the frequency or reporting, access to the data before it is published and ensures that the data is handled and quality assured in such a way as to ensure it is of the highest accuracy. This quality assurance process involves review of regulatory returns data on receipt, both by the relevant relationship manager for the individual operator as well as by an automated data quality flagging process. In addition, data on the wider sector is quality assured as part of the Industry Statistics process by the relevant Sector Specialist as well as a member of the Evidence & Analysis team before publication.

<sup>12</sup> Lotteries Information System.

<sup>13</sup> See "Market advice on the lottery sectors" provided to DCMS by the Gambling Commission (October 2014).

- The combination of these differentiating factors, in particular, the specific association with an individual good cause, is likely to limit the potential benefits of a comparator style database, which is designed to enable consumers to compare the breakdown of prizes, expenses and returns to good causes between operators or indeed between individual draws managed by the same operator.

**3.15** If the Commission website is a 'natural' place for players to visit to check this information. Given that the purpose of society lotteries is cause specific, it seems likely that players would first look to their chosen cause's website for clarity, rather than to the Commission's website for comparison.

**3.16** Cost:

- The development and maintenance of such a database would incur costs, which if large enough would have to be recovered from operators through increased fees paid by them for a Commission licence. If small lotteries are included, this would add a layer of complexity, given the regulation by Local authorities.

**3.17** Frequency of publication:

- There is also a potential consideration about the frequency of data made available for publication:
  - Data published on a draw-by-draw basis means the database could very quickly become large and potentially hard or confusing for consumers to use.
  - Data on annual averages means potential differences between the apportionment of prizes, expenses and returns to good causes on a draw-by-draw basis could either be lost or appear inflated by one single draw<sup>14</sup> with, for example, sizeable expenses.
  - Any reduction to the current three month period after the date of a draw, which currently acts as a deadline for the submission of draw specific data on the breakdown of prizes, expenses and returns to good causes could also pose a challenge to operators. This is because accurate details of expenses are not always immediately available, particularly for smaller operators for whom it can be a slower process to accrue accurate expenses relating to their draws. Consideration should be given to this potential consequence of a disproportionate impact upon smaller operators.
- Detail of the breakdown of prizes, expenses and returns to good causes would have to be given in percentage terms as to publish actual figures (even the actual pound total proceeds from which the reader could work it out) would run contrary to current confidentiality arrangements. There are limitations to how percentages can help make informed decisions, for example, a small individual draw may have relatively high (in percentage terms) expenses, which may be low in cash terms.

**3.18** Difference in schemes:

- Publishing percentage breakdowns for different types of lotteries without an explanation of the different models of lottery could also be misleading; as different schemes will naturally have different operating costs. For example, scratch cards can be costly to produce and have to have a high prize pool (more frequent wins) in order to attract players; therefore, the percentage returned to the good cause will normally be lower than that achievable in other forms of lottery. But societies will still choose to offer them as they attract a different market (those interested in instant play and win who do not want to commit to a subscription or wait for results) and will provide a return to the good cause that they would not achieve through, for example, subscription lotteries.

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<sup>14</sup> This may become an important factor because there is some indication that operators may enter details of large-scale draws individually, often more quickly than details of others (smaller draws) in multiple batches.

- 3.19** Official statistic publication:
- Care would need to be taken to ensure timings worked in line with Official Statistic requirements, this could impact on currency of data.
- 3.20** Operator commercial impact:
- Individual operators may argue that the publication of such data may impact their ability to raise money for good causes, particularly if it is highlighted to customers that either a relatively low amount is returned to good causes or paid out in prizes. We agree that this is a risk, but consider that providing the right form of information (taking account the issues mentioned above) would provide potential benefits to the overall market derived from increased transparency to customers across all participants within the market.

### **Adding extra transparency data to lottery tickets**

#### **Information currently required on tickets**

- 3.21** The Act (section 99 and schedule 11) and associated licence conditions for large society lotteries sets out the information that must be provided on lottery tickets. All tickets in a society lottery licensed by the Commission or registered with a local authority must state:
- The name of the society on whose behalf the lottery is being promoted.
  - The price of the ticket.
  - The name and address of the member of the society responsible for the promotion of the lottery. In the case of a small society lottery run under local authority registration the name and address of the ELM if there is one may be given as an alternative.
  - The date of the draw, or the means by which the date may be determined.
  - The fact, where that is the case, that the society is licensed by the Commission.
  - The website address of the Commission, if licensed by the Commission.
- 3.22** Tickets that are issued through a form of remote communication or any other electronic manner must specify the information above to the purchaser of the ticket and ensure that the message can be either retained (saved) or printed.
- 3.23** These requirements are designed to ensure that consumers can be clear who benefits from the lottery, how much the cost to enter should be, who to contact should they have any concerns or questions, when they should know the outcome of the draw and whether the lottery is operated by a licensed operator.
- 3.24** There is no requirement to provide information on how the proceeds of the lottery are spent/split within the Act. In addition, there is no requirement to provide the return each product makes to the good cause within Charity Law, although registered charities do publish annual accounts, which may be available via the Charity Commission website that will enable a consumer to find the overall proportion of funds raised that go to the charities' aims. Small charities (income under 25K) are not required to lodge accounts with the Charity Commission. However, all charities are required to provide to any person a copy of the most recent accounts and annual report on request under section 18 of the Charities Act 2011.

#### **What changes would be required**

- 3.25** In order to formally require operators of both small and large society lotteries to provide the suggested information on tickets, the Commission does not consider it is necessary to amend primary legislation.
- 3.26** To change the ticket information requirements for large society lotteries, the Commission could consult on an amendment to the licence conditions attached to lottery operating licences.

- 3.27** We do not consider there would be a need to change primary legislation as although section 99 of the Act sets out the information required on a ticket, the same section also allows the Commission to add conditions to either the class of lottery operating licence or an individual lottery operating licence.
- 3.28** Section 99 (1) requires that the Commission use powers under either section 75 (general conditions, including those that can be attached to a specified class) or 77 (individual conditions) for the purpose of achieving the requirements of the rest of section 99. Section 99 (10) expressly permits the Commission to attach lottery operating licence conditions that are more onerous than those set out by section 99. It states:
- ‘Nothing in this section prevents the Commission from attaching a condition to a lottery operating licence of a kind similar to but more onerous than a requirement of this section.’ Due to the 99(1) these may be either general conditions attaching to all lottery operating licences or specific conditions attached to an individual licence.
- 3.29** To change the ticket requirements for small society lotteries would require an order from the Secretary of State. Again, although the requirements for ticket information are set out in Schedule 11 of the Act<sup>15</sup>, Schedule 11 also contains powers to impose additional restrictions to all forms of exempt lottery<sup>16</sup> under Part 6. This includes (amongst other things) the ability for the Secretary of State to vary by order the nature of lottery tickets and the information appearing on them<sup>17</sup>.

### **Issues to consider**

- 3.30** A number of the issues outlined under consideration of Commission publication would also need to be considered here. These are those relating to the problems and misunderstanding that simply displaying a percentage breakdown can lead to, but also the fact that the nature of these lotteries and consumers affinity to the good cause may mean that this sort of information is in fact of little value to the participant and could be costly to add for the operator.
- 3.31** Accuracy of percentage return:
- Although lottery operators have to return a minimum percentage to the good cause, they do not always know what they can achieve above that until the lottery has concluded, they have a count of all ticket sales and have accounted for the 20% minimum, expenses and prizes. Therefore, in a large proportion of cases the best an operator could put on the ticket would be the average that sort of draw returns (or has to date), or the average any lottery they run returns, an estimate (based on their projected sales) or a minimum return. This could be considered to be more misleading to consumers.
- 3.32** Is the ticket the right place:
- Putting this information on the ticket will not allow consumers to make an informed choice and have a better understanding about how their money is spent by the society prior to participating. Tickets can only be issued to the participant once they have paid to enter the lottery. Section 99, (6) states:
    - ‘the fifth requirement is that the price payable for purchasing each ticket in a lottery promoted in reliance on the licence - ...
    - ... (c) must be paid to the promoter of the lottery before any person is given a ticket or any right in respect of membership of the class among whom prizes are to be allocated.’

<sup>15</sup> Schedule 11, Part 4, Small Society Lotteries, 36, (1)

<sup>16</sup> Small society lotteries are one of the classes of exempt lottery. In this case exempt means exempt from requiring a licence with the Gambling Commission in order to operate.

<sup>17</sup> Schedule 11, Part 6, Powers to Impose Additional Restrictions, &C, 59, (2), (d)

- 3.33** It may be better in order to achieve the aim that the required information is made available prior to purchase. We note that it may not be possible for societies to provide an exact breakdown (although as noted above an average may be possible) for each type of lottery they offer in advance.

**Work already underway**

- 3.34** It is worth noting that in response to the discussions through the Select Committee inquiry and the Committee's report the industry has started to consider the ways in which it might make this type of information available to consumers. The Lotteries Council, one of the trade associations representing the lotteries sector is exploring the possibility of collating this data from their members and publishing it via their website. They are considering what should be displayed and the impact of doing so. Their aim is to balance the potential detriment to good cause fundraising with the need to provide more information for the consumer.

## **4 Allowing private sector companies to run lotteries on behalf of good causes.**

### **Summary**

- 4.1** We understand that the Select Committee wanted the Government and the Commission to consider if it may be possible to establish a relatively light-touch regime for existing private sector companies (PSC) where the running of a lottery is clearly part of their corporate social responsibility rather than a commercial opportunity.
- 4.2** The Select Committee acknowledged that this may not be possible without a licence in place and the Government has suggested that non-specialist lottery providers may require more scrutiny, particularly at the outset of a venture, which may not necessarily result in a light touch regime.
- 4.3** The Commission agrees with the Government and recommends that it would primarily be inappropriate to set up such a scheme without regulatory oversight. It is not clear why wider industry would inherently be less risky than the charity sector and so a similar level of oversight would be appropriate. We also note that critically there are already many avenues open to industry to assist the lottery sector.
- 4.4** Within the current framework there are a number of ways in which private sector companies can currently support lottery fundraising. These include:
- Partnering with an existing society lottery to retail their lottery tickets.
  - Becoming a licensed external lottery manager (ELM).
  - Running an incidental non-commercial lottery at a non-commercial event.
- 4.5** To introduce the necessary change would require some variation to primary legislation.
- 4.6** Creating a separate framework would necessitate additional cost to set up and monitor and integrate with other lottery reporting, which may well be disproportionate to the benefit.
- 4.7** If the desired outcome is to utilise the skills and resources of business for lotteries, perhaps the opportunity already open to business to aid lotteries could be promoted.

### **Detail**

- 4.8** This section:
- Notes what lotteries industry can currently run and related changes in train that will slightly widen its scope to do so.
  - Reflects on the difficulties for introducing change both from a legislative perspective and applying appropriate regulatory oversight.
  - Lists some wider issues.

### **Can private sector companies run lotteries?**

- 4.9** Although private sector companies are unlikely to meet the criteria for a non-commercial society at section 19 of the Act, there are a number of ways in which they can currently support lottery fundraising.
- 4.10** Companies can support existing society lotteries to raise funds by partnering with them and acting as a retailer for their lottery tickets. This may include selling those tickets to employees or to customers. They may choose to do this as part of a corporate social responsibility initiative, or enter into a commercial arrangement with the society, where they are paid a commission on ticket sales (as part of the lottery expenses). This is a powerful way of assisting existing societies.

The key here is that they must ensure that the lottery is that of an existing registered or licensed society lottery and they must not do anything, which could be held to be running the lottery themselves – essentially, they must ensure that the lottery is run by the society and they are simply acting as a retailer. Otherwise they could be held to be promoting an unlawful lottery.

- 4.11 Private sector companies, who want to be more involved in the management of a lottery could apply for a licence to become an ELM. ELMs are commercial companies who offer services to society lotteries (see Appendix 3 for further information).
- 4.12 The Act also permits a number of exempt classes of lottery<sup>18</sup>. Within those, private sector companies could choose to run an incidental non-commercial lottery, customer or work lotteries. Incidental non-commercial lotteries can be used to raise funds for good causes. Customer and work lotteries cannot currently be used to fundraise as they were class of exempt lottery that was designed simply to enable lotteries to be offered for fun – ie all the proceeds (ticket sales) go back into prizes or covering reasonable costs (see Appendix 3 for further information).

### **Regulatory framework changes already underway**

- 4.13 In 2014, following advice received from the Commission, the Department for Culture, Media and Sport (DCMS) consulted on deregulatory measures in relation to certain classes of exempt lottery, these included some proposed changes to work lotteries, which would enable them to be used to raise funds for good causes (or simply continue to be offered for fun).
- 4.14 Following the consultation DCMS advised via their July 2014 responses document that they would be pursuing these changes through an appropriate legislative vehicle. The DCMS has since developed a Legislative Reform Order (LRO), which was initially due to be laid in April 2015, but subsequently had to be removed from the Parliamentary timetable due to other priorities. We understand that this is now being progressed with the aim of the changes coming into force in April 2016.
- 4.15 Permitting work lotteries to raise funds would enable private sector companies to run lotteries at their premises (although sales must be limited to a single set of premises) for their employees in order to benefit a charity of their choice.
- 4.16 The LRO also contains changes to incidental non-commercial lotteries, which would enable them to be held at commercial events. Again this would provide further scope for private sector companies to run fundraising lotteries, for example at a corporate event or show.
- 4.17 We acknowledge that this may be more limited than the Committee's ambitions for good cause generation but will provide another avenue for PSCs to support charities and good causes.

### **How simple would it be to permit the private sector to operate fundraising lotteries?**

- 4.18 It is acknowledged that this may involve licensing such schemes but the recommendation suggests the option for a light touch approach is explored, as the running of these lotteries would be expected to form part of their corporate social responsibility, rather than be a commercial enterprise.

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<sup>18</sup> Exempt lotteries do not require permissions to operate, and can be run by anyone meeting the criteria set out for each class. They must be offered within specific conditions set out in Schedule 11 of the Gambling Act 2005 (the Act) in order that they remain limited in scale and avoid the need for regulatory scrutiny. The majority of these exempt classes of lottery cannot be used to fundraise as they are prohibited from making any profit, which under the Act is the term used to describe proportion of lottery proceeds (ticket sales) that is returned to the good cause. That means that all of the proceeds must either be paid out in prizes, or fund reasonable operating costs.

## **What changes would be required**

- 4.19** There are a number of options for introducing such a change, all would involve some variation to primary legislation, although some (specific changes to the rules for exempt lotteries) may be carried out by the Secretary of State through an order depending on what is required to be achieved.
- 4.20** In order to create a new class of licensed private sector lottery the Act is likely to need amendments that first of all permit a commercial enterprise to operate a lottery, that do not capture bodies that are not society lotteries as external lottery managers and that sets out the rules and definitions related to any such class. Much of this would represent a fundamental change to the current approach in the Act and could entail changes to the section 14, section 99, and section 255 amongst others.
- 4.21** The other option is to either create a new class of exempt lottery under Schedule 11 or amend the existing requirements for work and/or customer lotteries – which as mentioned above are types of lotteries that commercial companies are already permitted to offer. Again, in order to create a new class of exempt lottery, you would need to develop and pass new primary legislation. In addition, although some changes to the conditions for exempt lotteries may be varied by order, others may require direct changes to the primary legislation.

## **Potential issues**

- 4.22** We do consider that introducing a licensing regime has some risk in that it is likely to be complex and burdensome and does not recognise the avenues already open to business to assist societies.
- 4.23** Risk of light touch regime:
- Allowing large scale corporate lotteries that are subject to limited or no regulation does not seem appropriate, whilst societies who have the sole purpose of raising funds for their good causes are subject to regulatory oversight deemed appropriate to their level of risk.
  - We do not see why a commercial company undertaking CSR would be less risky than a charity undertaking its core business.
- 4.24** Encroachment onto society lottery territory:
- We note that through the consultation on the proposed deregulatory measures for exempt lotteries the Government expressed their desire to ensure that large scale lotteries remained the preserve of society lotteries and the National Lottery; and stated that they wanted to avoid any changes that might have the effect of encroaching on the form and function of society lotteries. This proposal may have the inadvertent impact of changing this preserve by effectively encouraging private business into the market, and skewing it through size and resource.
- 4.25** Wider operator imperative concerns:
- Elsewhere concerns have been expressed about the commercial imperatives of ELMs within the lottery sector, with the suggestion that tighter regulation is required for them (or the schemes they manage) because of their commercial focus. It should be considered whether the same concerns could be an issue here.

## **5 Allowing societies to run lotteries on behalf of other societies**

### **Summary**

- 5.1** The Commission can clarify that this is already possible, and undertaken under the current legislation. The society simply has to be transparent about which good cause it is raising money for.
- 5.2** As the Committee recognised this is driven by the importance of the society being transparent about the cause each draw is benefiting such that consumers can make informed decisions.

### **Detail**

- 5.3** This section provides further background information on how the regulatory framework enables this action.

### **Background of the current regulatory framework**

- 5.4** Since the introduction of the Betting, Gaming and Lotteries Act 1963, lotteries have been permitted within law provided they are conducted by non-commercial societies for good causes that fulfil the purposes of the society, which should be charitable, supportive of sports, games or cultural activities, or any other purpose that is not for private or commercial gain. This permission was continued in the current legislation.
- 5.5** In order to offer society lotteries, the Act requires that a society is licensed by the Gambling Commission, or registered with a local licensing authority. Society lotteries can only be promoted for non-commercial purposes, as defined in Section 19<sup>19</sup> of the Act<sup>20</sup>.
- 5.6** Societies must provide information to the Commission or licensing authority on the purposes of the society. Licensed societies must provide evidence that they are non-commercial, such as Charity Commission registration, articles and memorandum of association or a written constitution, as part of the licensing process. Registered societies must provide details on the purpose for which the society is established and conducted and if they are a charity – their charity registration number.
- 5.7** Societies can if they wish ‘donate’ the profits of a lottery to another beneficiary if this is in line with the purposes of the society. Providing this is clear to the public through the marketing material, there are no regulatory restrictions to adopting this practice.
- 5.8** Societies currently are not restricted as to what their purposes are, providing they meet the general requirements of Section 19 of the Act. They can, therefore, choose to adopt a general fundraising purpose. A number of societies do already adopt this approach and work with local commercial partners on adopting specific good causes to be beneficiaries of lottery and other fundraising activities over a short or long term period.

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<sup>19</sup> Section 19 of the Gambling Act 2005 defines a society as 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.

<sup>20</sup> The Gambling Act 2005 also sets out in Schedule 11 a number of exempt forms of lotteries, which do not require a licence, but are subject to tight restrictions to ensure that they remain low-level or are simply offered for fun.

- 5.9** There are therefore already permissions in place for societies to raise funds for good causes other than the society itself, as the Act does not restrict societies to only running lotteries for self-funding. Societies can adopt purposes that are general in nature, or community focused, and are permitted to run lotteries which fulfil these purposes. Societies also have the powers to change the purposes of the society, and charities are permitted to some extent within Charity Law to amend their charitable purposes.
- 5.10** The second licensing objective requires gambling to be conducted in a fair and open manner. Transparency with regard to what cause lottery draws are being used to raise for is paramount and consistent with the expressed intention of the Committee.

## **6 Assess Camelot's proposals (as noted by the Select Committee) aimed at improving the clarity of marketing around lottery-like betting products and whether betting on lotteries should be banned**

### **Summary**

- 6.1** The context for the Select Committee's concerns was essentially that 'the evolution of online gambling is removing the distinction between society lotteries and betting'. This distinction is often referred to as the 'clear blue water' which is created in statute for lotteries, including the National Lottery. The Government agreed with the Committee that public transparency and reducing customer confusion is important.
- 6.2** With the regulatory work already undertaken and that which is ongoing to address clarity and the lack of evidence of impact on returns to good causes, the Commission recommends that it would currently be unnecessary and disproportionate to introduce either a ban or reclassification of bets on the outcome of lotteries.
- 6.3** It may however be sensible to close the apparent loophole that enables bookmakers to offer bets on the EuroMillions game from the National Lottery portfolio, where the clear policy intention was that such opportunity should not exist.
- 6.4** Whilst we do not consider there to be a significant risk to returns to good causes from either the National Lottery or society lotteries as the betting on lottery market is small and somewhat static, we will continue to monitor the area and advise further should significant growth or impact emerge.
- 6.5** Bets on the outcome of lotteries have been offered legally for many years. The current market is relatively small, tending to only represent a very small portion of a betting operator's wider portfolio. It accounts for just 2% of the Gross Gambling Yield (GGY) accounted for by the betting sector. New developments in the sector are mainly online, where traditional retail boundaries between lottery and betting are blurred, in particular if bets are marketed in a lottery tone.
- 6.6** Our previous advice<sup>21</sup> identified that any current impact on the lottery sector (in terms of the cannibalisation of lottery sales) was likely to be minimal, though a potential longer-term risk existed if the sector flourished, driven by product evolution or online consumer behaviour trends.
- 6.7** We are taking steps to improve the clarity of expectation around how such products are offered, having issued a note to the industry on our concerns in the area and the need to take action and undertaking [follow-up compliance work](#). We consider that it is appropriate to continue our work to ensure that bets on lotteries are offered in a way that allows consumers to identify them as bets and make an informed choice about whether or not to participate in them.

### **Detail**

- 6.8** This section:
- Reviews the background to bets on lotteries, including noting the comparatively small size of the market.
  - Reflects on concerns raised on the sector, concluding that while there is not much impact in terms of cannibalisation of sales from lotteries clarity of product can be an issue, particularly online.

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<sup>21</sup> Market advice on the lottery sectors, advice provided to DCMS in September 2014

- Assesses potential benefits and disadvantages of banning or reclassifying the sector and concludes that such action would be disproportionate.
- Assesses current framework for ensuring clarity of products and notes the work currently ongoing by the Commission, which we consider sufficient at this point.

### **What are bets on lotteries?<sup>22</sup>**

- 6.9** Most major bookmakers have offered products that involve fixed odds betting on the outcome of a lottery draw for many years. These products are available in betting premises and online/mobile and have traditionally been linked to the outcome of foreign national lotteries. Betting on the outcome of UK National Lottery products is prohibited by the Act.
- 6.10** For most betting operators, betting on lottery products forms a small part of a much wider portfolio of betting products they offer and are purely a commercial venture. However, a small, growing number of betting operators only offer bets on the outcome of lotteries and have a model where they link with a charity partner who will receive an agreed percentage of the profits derived from these bets. Many of these latter offers occur online and make use of imagery and language commonly associated with lotteries, creating a lottery tone.
- 6.11** As these products meet the definition of betting in the Act and are offered by licensed betting operators, they are classified as betting. As such, they are not subject to any of the regulations related to lotteries. Therefore, unlike lotteries, there are no limits on prizes, or sales, meaning they can offer and promote (sometimes heavily) larger jackpots than society lotteries. They can of course be offered by commercial operators for a profit and there is no requirement to return any money to a good cause.
- 6.12** It is noteworthy that internationally there is debate on introducing a 'betting on lotteries' system as a 'national lottery' offer, rather than running own state lotteries. This demonstrates the potential for the medium to evolve and the need to monitor its development.

### **Market<sup>23</sup>**

- 6.13** The market is likely not a large one currently. From operator data, we estimate that GGY derived from non-remote betting on the outcome of lotteries across the whole sector is around £90m per annum, not even a week's National Lottery sales. This has been relatively static over time. Remote GGY across the whole GB sector is reported as being in the region of £15m. This is likely growing but we do not yet have the data to support that supposition.

### **Concerns**

- 6.14** There are two broad areas of concern in relation to these products:
- That sales of betting on lottery products may divert consumer spend from actual lottery products, resulting in a real decline in the money raised for good causes, given minimum requirements for the rate of return to good causes for lotteries, as opposed to no requirement for bets on lotteries.
  - This potential 'cannibalisation' is perhaps more of a concern in relation to the National Lottery, but can also impact on society lotteries, where bets on lotteries can exploit the best of society and National Lottery worlds:
    - life changing prize levels (in some cases) seen in the National Lottery portfolio
    - an affinity with a particular good cause, a key motivator for society lottery participation.

<sup>22</sup> See Appendix 4 for regulatory framework

<sup>23</sup> This is considered to be more accurate than the market size estimates contained within the previous advice provided by the Commission, as since then we have been able to consult regulatory returns made by remote operators after the Gambling (Licensing & Advertising) Act 2015.

- 6.15** With some operators now linking to charities, there is potential for an impact on the society lottery sector too. The emergence and growth of digital communication enables small operators to efficiently target and have direct relationships with players and leverage the commercial opportunity in a way in which they could not even three years ago.
- The risk that consumers are misled through a lack of clarity of presentation and marketing of betting on lotteries.
- 6.16** A number of these products create a similar look and feel to a traditional lottery, cloaking the fact that they are betting products. Operators may in this way address a commercial issue that consumers are content to play lotteries but do not wish to bet, as we explored in our previous advice.
- 6.17** In our view, this is particularly an issue in the online space, where there is more scope for ambiguity. At retail, it is normally clear to a consumer that they have entered a betting premises and the expectation is that they will be placing a bet.
- 6.18** Even where operators provide a return to a good cause, there can be no guarantee that the same level of return provided by the society lottery framework will be met. If the player thinks they are playing a lottery they may well not appreciate this.

### **Evidence of impact**

- 6.19** There is little empirical or academic research into the impact on lottery revenues attributable to betting on lotteries, with the exception of one paper, which considered the Irish market<sup>24</sup>. NERA Economic Consulting (NERA) was asked to review this evidence, consider other evidence as well as Commission held data in order to confirm whether causality could be established and in general assess the credibility of the wider evidence base in this area.
- 6.20** Purfield and Waldron (1999) concluded, on the basis of a methodology deemed unreliable by NERA, that bets on the Irish Lotto and the Lotto game itself were complements rather than substitutes. It is unclear whether there is a direct read-across to the Great Britain (GB) market as the Irish paper considers both forms of participation in a single branded event, as opposed to participation across a spectrum of separate branded events.
- 6.21** The current evidence-base is not able to support or refute a hypothesis concerning any impact on lottery revenues attributable to betting on lotteries. To gather the scale and type of evidence required to do so, would involve a considerable amount of research and associated cost, for which there is not time within the timescales available to prepare this report. Given the relatively small size of the market for betting on the outcome of lotteries, we do not foresee this situation changing quickly. However, there remains a latent risk, driven by the evolution of the remote sector.

### **Prohibiting or re-classifying bets on lotteries**

- 6.22** Camelot has suggested that bets on the outcome of lotteries are either:
- Subject to an outright ban - essentially extending the prohibition on betting on the outcome of products offered by the UK National Lottery to include all lotteries (both society lotteries licensed or registered in GB and overseas lotteries); or
  - reclassified as lottery products.
- 6.23** It is worth noting that either option would essentially have the same effect on the betting operators that currently offer these products, and also represent a reduction of choice for the consumer.

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<sup>24</sup> Purfield and Waldron (1999) "Gambling on Lotto Numbers: Testing for Substitutability or Complementarity using Semi-Weekly Turnover Data", Oxford Bulletin of Economics and Statistics, 61(4), p. 527.

**6.24** Under either an outright ban or a reclassification operators would no longer be able to offer the products. This is because if bets on lotteries were reclassified as lotteries and therefore regulated as such, they could only be offered by non-commercial societies. As commercial companies, betting operators would not meet the definition of a non-commercial society<sup>25</sup> and so would not be permitted to offer these products.

### **What changes would be required**

**6.25** If the Government were minded to place an outright ban on betting on any type of lottery, then we consider this would require a change to primary legislation. We consider this could be achieved by amending Section 95 of the Act. This section currently sets the prohibition on betting on the outcome of the National Lottery and could be broadened to include bets on both society and international lotteries.

**6.26** If minded to reclassify bets on lotteries as lotteries, then we consider this could be achieved by secondary legislation within the scope of Section 14(7). Section 14 defines when an arrangement should be treated as a lottery. Subsection (7) allows the Secretary of State to introduce regulations stipulating that a specific arrangement is or is not a lottery whilst not being constrained by the definitions set out earlier in the section or within Schedule 2 (which makes further provisions about whether something is to be treated as a lottery). Note that any such regulations would have to be tabled before and approved by resolution of both Houses of Parliament before they could be effective, by virtue of the operation of s.355(4).

### **Potential issues or benefits**

**6.27** Banning the ability to bet on all lotteries could eliminate the perceived risk to the National Lottery, or indeed society lotteries, of cannibalisation of ticket sales. It would also naturally remove any issues of clarity for consumers.

**6.28** If the aim is to ensure a greater overall return to good causes then this would not necessarily do so, for two reasons:

- As noted above a number of these products already raise funds for good causes, this would close down that particular income stream, and
- we have found no evidence to suggest that if these products were not present, people would participate in the National Lottery or other lotteries to a greater degree

**6.29** Re-classifying these products as lotteries would also have the benefit of eliminating risks to clarity. It may, only if the operator continued to promote the product, cause a higher return to good causes through the statutory framework.

**6.30** As noted above, this would force the current operators either to change the nature of their business (or create a new non-commercial arm) or simply stop offering the products. This might in turn lead to unintended consequences such as a change in the nature of non-commercial societies or reducing returns for good causes overall (where those with links to good causes withdraw from the market). Action in this way seems disproportionate to the risks faced.

**6.31** For both options we consider that any suggested ban or reclassification could be subject to legal challenge. There is existing case law<sup>26</sup>, regarding 49's, a lottery style betting product. This scheme was unsuccessfully challenged by Camelot in a case, which usefully sets out the distinctions between a lottery and a bet and may represent a good authority after the Act.

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<sup>25</sup> As defined in by Section 19 of the Gambling Act 2005

<sup>26</sup> Judgement of Bow St. Magistrates Court of 18 August 1997

**6.32** There is also the issue of whether this action could be considered fair and justified. As noted previously bets on the outcome of lotteries have been offered since at least the start of the National Lottery. The majority of these products are clearly marketed as betting and have raised no cause for regulatory concern; equally we have found no clear evidence of their impact on National Lottery or other lottery sales. Additionally the relative size of the market is small. Without further evidence of impact on the returns to good causes or harm to the consumer, we do not consider it justified to disadvantage betting operators through the banning or reclassification of bets on lotteries at this time.

### **Improving clarity of marketing around betting on lotteries**

#### **Proposal**

**6.33** It has been proposed that the clarity of marketing of betting on lottery products should be improved to ensure that they can be easily distinguished from lottery products.

#### **Where being clear to consumers fits within the current regulatory framework**

**6.34** Under the fair and open licensing objective, the Commission expects all licensees to have due regard to the information needs of customers and communicate with them in a way that is clear, not misleading, and allows them to make a properly informed judgment about whether to gamble. This is set out in our [Statement of principles for licensing and regulation](#).

**6.35** The [Advertising Standards Authority \(ASA\)](#) is the UK's independent regulator of advertising across all media. It applies the UK Advertising Codes (the Codes), which are written and maintained by the Committee of Advertising Practice (CAP) and the Broadcast Committee of Advertising Practice (BCAP). They include general rules that state advertising must be responsible, must not mislead, or offend and specific rules that cover advertising to children and advertisements for specific products and services, including gambling. Operators that do not comply with the codes could be subject to adverse publicity resulting from adjudication by the ASA or sanctions, including the denial of media space, for example.

**6.36** [Section 3 \(Misleading advertising\)](#) of The Committee of Advertising Practice (CAP) and Broadcast Committee of Advertising Practice (BCAP) codes states:

- Marketing communications must not materially mislead or be likely to do so.
- Marketing communications must not mislead the consumer by omitting material information. They must not mislead by hiding material information or presenting it in an unclear, unintelligible, ambiguous or untimely manner.
- Material information is information that the consumer needs to make informed decisions in relation to a product. Whether the omission or presentation of material information is likely to mislead the consumer depends on the context, the medium and, if the medium of the marketing communication is constrained by time or space, the measures that the marketer takes to make that information available.

**6.37** The Consumer Protection Regulations (CPRs) prohibit unfair marketing to consumers, including misleading advertising. Whenever it considers complaints that a marketing communication misleads consumers or is aggressive or unfair to consumers, the ASA will have regard to the CPRs. That means it will take factors identified in the CPRs into account when it considers whether a marketing communication breaches the CAP code.

**6.38** It is an ordinary code provision in our [Licence conditions and codes of practice \(LCCP\)](#) that operators should adhere to the UK Advertising Codes and apply them to forms of marketing that are not normally captured by those codes. Operators should comply with ordinary codes or be able to explain convincingly why their non-compliance does not adversely affect their ability to pursue the licensing objectives. Otherwise their continued suitability may be called into question.

**6.39** A social responsibility code provision in the LCCP requires that operators satisfy themselves that their marketing communications, advertisements and invitations to purchase (within the meaning of the CPRs), do not amount to or involve misleading actions or misleading omissions within the meaning of those regulations. Operators must comply with social responsibility codes. Failure to do so carries the same weight as a breach of licence conditions.

#### **Work already undertaken**

- 6.40** In July 2015 the Commission [outlined our concerns](#) in relation to the marketing of betting on lotteries and asked operators to take action to address them. We stated that:
- ‘Betting on the outcome of lotteries and other lottery themed gaming products must be presented and advertised in a way that makes it clear to consumers that they are not entering a lottery and that allows them to easily identify what product is being offered.’
- 6.41** We also stated that:
- ‘...the Commission expects to see affected operators engaging with this issue and taking steps to address the concerns expressed. Essentially, ensuring that it is clear to consumers what form of gambling they are participating in, where otherwise the presentation could be considered ambiguous and lead them to believe they are participating in a lottery.
  - If operators are unable or unwilling to alleviate these concerns, we will consider whether to introduce licence conditions to address the issue...’
- 6.42** In response to this and the concerns expressed throughout the Select Committee process, a group of betting operators have started to develop a voluntary industry code. We understand that this industry group is seeking to have its code adopted across the industry; if successful this may obviate the need for formal regulation.
- 6.43** On a case by case basis, we have and will continue to take compliance action. We have already seen changes to how some products are offered/promoted as a result of our activity and we are working with a number of other operators to achieve the same outcome.
- 6.44** The Commission requires all operators to have due regard to the licensing objectives and to comply with the Act and the conditions of their operating licence; we treat any breaches very seriously. In circumstances where either a breach of the Act or the licence conditions occurs, we will consider what action we need to take. That would normally be regulatory rather than criminal and could include a review of an operating licence, which could result in a formal warning, additional licence conditions, a financial penalty or suspension or revocation of the operating licence.
- 6.45** Separately the [ASA have adjudicated](#) on a related advertisement following the receipt of a consumer complaint.

#### **Potential next steps**

- 6.46** We consider that we can continue to take effective action without the need for change to primary legislation. In addition to the action we are currently taking, it is worth noting that the Commission can and, if necessary, will add specific licence conditions to ensure that operators are clear what type of product they are offering. This may include, but not be limited to, a condition requiring operators to specify the type of product being offered, for example, by requiring a prominent message specifying the product on offer at the top of web pages, or messaging on each product.

## **Connected issue: Bets on EuroMillions**

- 6.47** Whilst not initially sought as part of this advice, we do think it is worth noting concerns expressed by Camelot regarding operators who transact with British consumers taking bets on the outcome of EuroMillions but attempt to get round the restriction on betting on the UK National Lottery by suggesting the bet is placed on a non-UK member of the EuroMillions community (such as, Spanish Euromillions). The Commission notes the increased profile of operators offering this product.
- 6.48** In the Commission's view the question about whether or not accepting bets on any version of the Euromillions lottery is technically compliant with section 95 of the Act is finely balanced. Our advice is that whilst it may be legally and technically correct to say that the Spanish or Austrian lotteries do not form part of the UK National Lottery, because all versions of Euromillions rely on the same event to determine the result it is something of a distinction without difference.
- 6.49** Although the Commission has long held the view that this practice is contrary to the policy intention which underpins Section 95 of the Gambling Act, this practice has not so far become a regulatory priority given the apparently low impact on the National Lottery, although the Commission has kept the position under review.
- 6.50** In considering these wider questions the Commission has again considered this issue. We remain of the view that taking bets on non-UK versions of the Euromillions draw goes against what must have been the original intention of Parliament when it enacted the prohibition on betting on lotteries which form part of the National Lottery, as set out in Section 95.
- 6.51** While the exploitation of this loophole has so far not had significant impact on the National Lottery, significant future growth in this market may change that position. As such, and in the interests of clarity, the Commission is of the view that the loophole should be closed. Clearly there are several ways of achieving this. Assuming that it is not practical to pursue clarification of Section 95 or to pursue the imposition of a Secretary of State condition, the Commission proposes to explore the scope for it using its licence condition making powers as a way of putting the matter beyond doubt.

## **7 Conduct a review of the process for applying for a lottery licence to ensure that it does not provide unnecessary burdens on new applicants**

### **Summary**

- 7.1** We note that this is within the context that the Select Committee recommended that the Gambling Commission look again at whether the burdens of applying for a licence could be simplified any more for small, start-up lotteries.
- 7.2** The Commission recommends that there is currently no further scope or specific operator demand for simplification<sup>27</sup>. Our regulatory approach will ensure that this is reviewed on a regular basis, and is responsive to concerns raised, although we note that there has not been any significant push for further revisions to the process.
- 7.3** The application process is driven by risk assessment. This holds true for the split between technically small and large society lotteries, but also within the large sector where there are further splits driven by size.
- 7.4** The risk-based approach is appropriate in our view and the short review undertaken has not revealed any areas which appear inconsistent with the principles of our regulatory regime. In particular, the burden on small lotteries appears small (concerns for that sector focus more on where tickets might be sold than the application process).
- 7.5** We note that an alternative option is to consider changing the thresholds at which non-commercial societies require a licence. This would provide more small, start-up lotteries with a route into the sector, at a lower cost and via a simpler process than the licensing process allows. We envisage that this will be covered in the caps review for small lotteries.

### **Detail**

#### **Small society lotteries**

##### **Overview of the registration process**

- 7.6** In order to obtain a registration to offer small society lotteries, operators must apply to the local licensing authority for the area in which the principal premises of the society are situated and pay the prescribed fee.
- 7.7** The form the application takes is prescribed by regulations<sup>28</sup>. Applicants are required to give the following information:
- about the society
  - name of society
  - address of office or head office of society
  - telephone number of society
  - purpose for which the society is established and conducted
  - if they are a charity, their charity registration number
  - if the society has held an operating licence under the Act in the period of five years ending with the date of the application, and if yes if the licence has been revoked within that period and the reasons for revocation
  - If the society has applied for and been refused an operating licence in the period of five years ending with the date of the application.

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<sup>27</sup> We have considered:

- technically small society lotteries, which register with a local authority
- 'small' technically large society lotteries, where those start-ups planning to exceed the thresholds for a small society lottery, will require a licence from the Commission.

<sup>28</sup> SI 2007 No. 2328, The Small Society Lotteries (Registration of Non-Commercial Societies) Regulations 2007

- 7.8** About the person applying on behalf of the society:
- name
  - capacity
  - address
  - telephone number.
- 7.9** The form then asks applicant to complete a declaration and checklist, which asks them to:
- confirm that they have made the application on behalf of the society referred to in the previous section of the form and have authority to act on behalf of that society
  - enclosed the required fee (£40)
  - confirm that, to the best of their knowledge, the information contained in the application is true and that they understand that it is an offence under section 342 of the Act to give information which is false or misleading in, or in relation to, this application.
- 7.10** Respondents to the Select Committee Inquiry (notably National Council for Voluntary Organisations (NCVO) and Local Hospice Lottery Ltd) commented on the registration process and regulatory restrictions placed upon societies<sup>29</sup>. NCVO argued that the process of setting up a society lottery disadvantages smaller organisations with fewer resources the most. Although it is not clear, whether this a reference to the licensing process or simply the administration involved in creating a new society in general. Societies are also required to submit lottery returns for each lottery, which enables the regulators to monitor if a lottery fails to return a minimum of 20% to good causes, and whether the society has breached the proceeds limits for individual lotteries and annual aggregated lotteries. Without this reporting it would be difficult for the regulator to monitor compliance with law.
- 7.11** The information required to operate a small society lottery appears to represent the minimum that would be expected to enable the local licensing authority to register that applicant and ascertain the nature of the body applying for that registration to ensure it is an appropriate entity.
- 7.12** There is no evidence of either regulatory burden or emerging risk to the effectiveness of this process. Requiring this level of information, therefore, appears to be proportionate to the risks posed by these lower level lottery operators, allowing smaller good causes the opportunity to run lotteries, whilst not being required to apply for and maintain a more costly and more highly regulated operating licence.
- 7.13** The current registration process enables the regulator to identify the society and its aims and objectives whilst confirming that the society is non-commercial<sup>30</sup> and identify a responsible person at that society. The questions about interactions regarding licence applications provide an indicator of when the local licensing authority may want to further scrutinise the application to ensure the society is genuine and suitable.

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<sup>29</sup> Society Lotteries Fifth Report of Session 2014-15 paragraph 74

<sup>30</sup> Section 19 of the Gambling Act 2005

(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.

## Large society lotteries

### Overview of the licensing process

- 7.14** In order to obtain a licence to offer large society lotteries, operators must apply to the Commission and pay the specified application fee. Application and annual fees for society lottery operators are based on a scale of annual proceeds, with the lowest category permitting annual lottery proceeds of up to £100,000. Whilst this is below the annual limit for societies registered with a licensing authority, it accounts for those societies that operate larger lotteries with individual proceeds above £20,000 (for further information on fees see Appendix 5). Whilst large societies must (unlike small societies) have separate licences for remote and non-remote activities, there is a smaller 'ancillary' remote licence available for those societies whose lottery proceeds are gathered largely by non-remote means. Holders of ancillary remote lottery licences are exempt from certain remote technical standards.
- 7.15** Each application is considered on merit and on the evidence available. In considering an application the Commission has regard to the licensing objectives (and whether they are likely to be compromised) and the suitability of an applicant to carry out the licensed activities.
- 7.16** All applicants are required to supply the Commission with sufficient and complete information to support their application and in particular information that will enable an assessment on their suitability to be made (see 7.19). However, the Commission takes a risk based and proportionate approach to the amount and detail of information an applicant is required to provide. In practice, although all operators will be required to submit a certain basic level of information, any further information or evidence required to determine the licence will be proportionate to the scale and complexity of the applicant organisation. This flexible approach means that smaller, simpler organisations will often be subject to a less 'onerous' process than those that are large or complex in structure.
- 7.17** When requesting information and evidence we only request information that is required to support decisions.
- 7.18** The Commission uses other sources where that is appropriate or where its initial review has highlighted areas of concern. The sources the Commission may access, appropriate to each case, include, but are not restricted to:
- Disclosure and Barring Service (DBS) and Disclosure Scotland
  - Court records
  - Company Watch
  - Companies House
  - Dun & Bradstreet
  - Equifax
  - Financial Conduct Authority
  - HMRC
  - The Insolvency Service
  - The Solicitors Regulation Authority
  - The Law Society of Scotland
  - National Crime Agency
  - Sports governing bodies
  - Open source internet searches
  - Other regulators in the UK and abroad
  - Police forces in UK and abroad
  - References provided to the Commission.

- 7.19** The Commission assesses the suitability of the organisation in all applications made. It has regard to the following elements and seeks evidence to support and enable an assessment to be made against each one:
- Identity and ownership:
    - the identity of the applicant and or person(s) relevant to the application and in the case of an application for an operating licence, who ultimately owns a corporate applicant.
  - Finances:
    - financial and other circumstances of the applicant past and present and or person(s) relevant to the application. For operating licences this will include the resources likely to be available to carry out the licensed activities.
  - Integrity:
    - the honesty and trustworthiness of the applicant and/or person(s) relevant to the application.
  - Competence:
    - the experience, expertise, qualifications and history of the applicant and or persons relevant to the application.
  - Criminality:
    - criminal record of the applicant and or person(s) relevant to the application.
- 7.20** Applicants for an operating licence are asked about their policies for ensuring that the licensing objectives will be adhered to. Guidance is provided on the Commission’s website and in the guidance notes that accompany the application form.
- 7.21** Depending on the size of the organisation applying the Commission requires those individuals who will hold responsibility for the management and compliance with the licensing objective to be approved by the Commission as competent to do so.
- 7.22** The information that is required from all applicants is necessary to allow the Commission to assess suitability. However, there are certain concessions that the Commission makes in respect of society lottery applications as outlined below:
- Competence:
    - rather than each individual being required to seek approval we only require one individual to have overall responsibility; however, we do say for business continuity purposes (to ensure the provision of lottery facilities remains uninterrupted) they may wish to have approval for two.
  - Integrity:
    - in addition, where a lottery application is made by a Local Authority, the Commission will assume integrity when assessing the suitability of any local authority to run a lottery. This assumption is specified in accordance with section 70(7) of the Act.
  - Financial circumstances:
    - when assessing the financial circumstances of society lottery applicants, as these are most usually non-commercial organisations, the Commission does not require as much financial documentation as it does from commercial entities. The Commission does not require individuals in key positions to declare and evidence their financial assets and liabilities, as they will not be funding the start-up costs or the running of the lottery. The Commission will accept from the applicant evidence by way of a set of accounts and a business forecast that there are sufficient funds to start the lottery. That any shortfall in the minimum of 20% going to the good cause will be met by the society lottery through contingencies built into the business plan and financial running of the lottery.
- 7.23** The Commission’s approach to licensing is subject to constant review and has evolved organically as we have understood the types and level of information required to enable us to assess applications for different types of organisations within each of the gambling sectors we regulate.

- 7.24** This has been a result of learning not only through carrying out the licensing process, but also listening to the views of the sector fed back through consultation or via attendance at events such as the annual lottery conferences. As noted above, this has already resulted in a number of changes to the licensing process for society lottery applicants.
- 7.25** We license and receive applications from a large range of operators with varying aspirations, from local level good causes to those with a national reach. Our current approach allows us the flexibility to apply the tools we have to determine a licence accordingly, meaning that information and evidence requests are proportionate to the size, type and scale of the operator and the issues they might pose.
- 7.26** As such, we have not identified any further scope for simplification at this time. We acknowledge that the process for applying for a licence may represent a burden for some but consider that it represents the minimum required in order for the Commission to be able to confidently issue a licence, reassured by the information and evidence the process allows us to gather and assess. We must ensure that all operators are suitable and capable of offering gambling within the framework provided by the Act. For lotteries, this is another level of protection that enables us to ensure that applications are for genuine non-commercial societies, with the intent of raising funds for good causes.
- 7.27** That said, and as stated earlier, the licensing process will continue to evolve as new business models develop and we continue to further understand the information that helps us to assess licence applications on the basis of risk to the licensing objectives. Steps have already been taken to reduce the regulatory burden for lotteries where the risk has been assessed as being negligible – one example of such action is the removal of the requirement for non-remote lottery operators to be required to pay any lottery proceeds paid for by credit card directly into a customer account. The risk to the licensing objectives is low, but the burden of compliance with this licence condition was high. Further engagement will commence with the industry through the forthcoming fees review, which will also provide an opportunity to gather formal feedback on a large scale regarding our approach to licensing, and so may lead to some broader changes than simply fees structure.

# Appendix 1: Society lottery data held and published

## Data Held

- A1.1** Society lottery operators licensed by the Commission (ie large society lotteries)<sup>31</sup> are required to submit regulatory returns detailing the types and frequency of lotteries they run and a summary of:
- number of remote lotteries managed
  - total proceeds (remote).
- A1.2** 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.
- A1.3** Although a part of the data collection on the distribution of total stakes is a requirement to report the total amount awarded in prizes, the Commission does not currently require operators to return data on the distribution of the prize fund within that draw (for example, specifying the maximum prize or the number of prizes etc.).
- A1.4** In addition, operators holding an ELM licence are required to submit regulatory returns detailing the types and frequency of lotteries they run, as well as financial information for both Commission licensed and licensing authority registered society lotteries on:
- number of lotteries managed (split by remote and non-remote)
  - total proceeds (split by remote and non-remote)
  - ELM percentage of total proceeds collected.

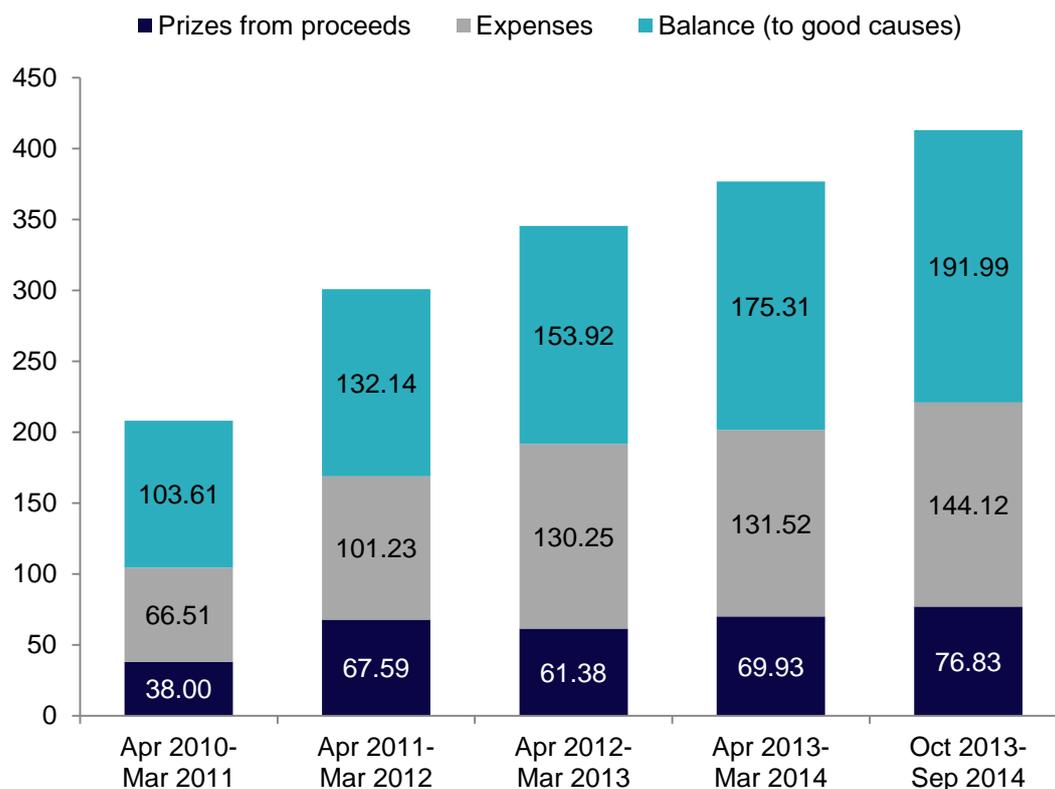
## Data currently published

- A1.5** The Commission publishes bi-annual [Industry Statistics](#) in both Word and Excel formats to ensure they are widely accessible and reusable. This includes aggregated data about the size and shape of the regulated market across all sectors of gambling. The 'Large Society Lotteries' section of Industry Statistics contains details of annual total proceeds within the market regulated by the Commission, including the breakdown of prizes from proceeds, expenses and the ensuing balance to good causes. An example from the most recent publication is shown in Figure 1 below. Note that the Commission Industry Statistics does not include data on small society lotteries, which is collected by local authorities.

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<sup>31</sup> As opposed to small society lotteries administered by local authorities

**Figure 1: Lottery proceeds, expenses and prizes £m**



Source – “Industry statistics - April 2010 to September 2014”

**1.6** Industry Statistics also includes a table containing the total proceeds raised by ELMs, as well as the percentage of total proceeds accounted for by ELMs. An excerpt is shown in Table 1 below:

**Table 1: ELM managed proceeds**

£m	2010/11	2011/12	2012/13	2013/14	Oct 2013-Sep 2014
<b>Total Proceeds raised by ELMs</b>	89.56	184.95	223.15	253.90	240.39
<b>% Proceeds raised by ELMs</b>	43%	61%	65%	67%	58%

Source – “Industry statistics - April 2010 to September 2014”

## Appendix 2: Society Lottery definitions, including multiple licence restrictions

- A2.1** In GB, society lotteries can only be run by non-commercial entities. Section 19 of the Act states that a society is non-commercial if it is established and conducted:
- for charitable purposes
  - for the purpose of enabling participation in, or of supporting, sport, athletics or a cultural activity
  - for any other non-commercial purpose other than that of private gain.

- A2.2** Those entities are called societies within gambling legislation and require either a registration from a local licensing authority (small society lottery) or a licence from the Commission (large society lottery) dependent upon proceeds. As follows:

### Annual aggregate proceeds (ticket sales)



### Individual draw proceeds (ticket sales)



Key:

- Small Society Lottery, requires registration with local licensing authority
- Large Society Lottery, requires a licence from the Gambling Commission

- A2.3** Schedule 11, part 4 of the Act sets out those thresholds and states that a society lottery is a large lottery if the arrangements for the lottery are such that total proceeds (ticket sales) from it:
- in a single society lottery exceed £20,000, or
  - the proceeds in cumulative lotteries promoted in the same calendar year have aggregate proceeds in excess of £250,000.
- A2.4** This and other parts of the Act mean that a single society cannot hold multiple permissions. Other relevant sections include:
- Section 258 states that a person commits an offence of promoting a large society lottery unless they hold a lottery operating licence issued by the Commission or the lottery is an 'exempt lottery', which includes 'small society lotteries'.
  - Schedule 11, parts 4 and 5 set out the requirements for small society lotteries including the requirements for a registration with a local authority.
  - Schedule 11, part 4 (5) states that if a society promotes a lottery, which is a large society lottery, then every subsequent lottery it promotes in that year and in the following three years will also be a large lottery and will require the society to hold a lottery operating licence issued by the Commission.

## Appendix 3: ELMs and different forms of lotteries

### External lottery manager (ELM)

- A3.1** An ELM is defined in the Act as a person or body who makes arrangements for a lottery on behalf of a society of which they are not a member. All ELMs must hold a lottery managers operating licence issued by the Commission before they can promote a lottery on behalf of a society.
- A3.2** The Act allows societies to employ ELMs to manage all or part of their lotteries so that societies can benefit from economies of scale that come with employing an ELM. The intention of these provisions is relatively limited in scope: they are designed to do nothing more than allow a society to 'outsource' the running of a lottery to a third party.

### Incidental non-commercial lottery

- A3.3** An incidental non-commercial lottery is one that is incidental to a non-commercial event. Examples may include a lottery held at a school fete or at a social event such as a dinner dance. An event is non-commercial if all the money raised (proceeds) at the event including entrance fees, sales of food and drink and so on, goes entirely to purposes that are not for private gain: therefore, a fundraising social event with an entrance fee would be non-commercial if the monies raised went to a society but would not be non-commercial if the monies were retained by the organiser for private gain. However, money raised by third parties will not form part of the proceeds of the event and so may be appropriated for private gain. An example of this would be refreshments or entertainment provided at the event by an independent third party.
- The Act and a related Statutory Instrument<sup>32</sup> specify that:
    - the promoters of the lottery may not deduct more than £100 from the proceeds in respect of the expenses incurred in organising the lottery, such as the cost of printing tickets, hire of equipment and so on
    - not more than £500 can be spent on prizes (but other prizes may be donated to the lottery)
    - the lottery cannot involve a rollover of prizes from one lottery to another
    - all tickets must be sold at the location during the event, and the result made public while the event takes place.

### Work lotteries

- A3.4** These can only be run and played by colleagues at a particular place of work.
- A3.5** Work lotteries can only be promoted by someone who works on the premises and tickets can only be sold to other people who work on the same single set of premises<sup>33</sup>. The lottery must not be run for profit (profit is the money left over for good causes) and all the proceeds (gross ticket sales) must be used for prizes or reasonable expenses incurred in organising the lottery. An arrangement such as a Grand National sweepstake held in an office is an example of a work lottery.

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<sup>32</sup> Gambling Act 2005 (Incidental Non-Commercial Lotteries) Regulations 2007 (SI 2007/2040)

<sup>33</sup> The Commission is of the view that the wording 'single set of premises' was designed to include the situation where there might be multiple buildings on a single site, such as a hospital site or the many buildings which may exist within larger corporations. The term does not include multiple sites; for example a company with premises in more than one area would not be able to sell tickets for a single private lottery covering all of the sites.

## **Customer lotteries**

**A3.6** A customer lottery is a lottery promoted by the occupiers of business premises, who sell tickets only to customers present on their premises. Alongside ticket requirements, the Act requires that in customer lotteries:

- the lottery must be arranged to ensure that no profit is made
- tickets may be sold or supplied only by or on behalf of the promoter
- tickets must not be sold to children under 16 years of age
- no advertisement may be displayed or distributed except on the business premises nor may it be sent to any other premises
- another customer lottery cannot take place within seven days on the same business premises
- tickets (and the rights they represent) are non-transferable
- no ticket may result in the winner receiving a prize worth more than £50
- no rollovers of prizes from one lottery to another are permitted.

## Appendix 4: Background to the regulatory framework for bets on lotteries

- A4.1** The Act sets out three forms of gambling:
- gaming (games of chance)
  - betting; and
  - lotteries (including the National Lottery).
- A4.2** It provides definitions and conditions for each of these forms of gambling and specific rules for the various subsets of betting, gaming and lottery that can be operated. This includes:
- gaming – casino (bankers games) or equal chance gaming (such as bingo)
  - betting – general betting, pool betting and betting carried out by an intermediary
  - lottery – National Lottery, society or exempt lottery, and either simple or complex in structure.
- A4.3** Around this, the Act makes provisions for the manner in which these types of gambling may be offered, for example under licence, registration or permit, as non-commercial, prize gaming, exempt gaming or lotteries. However, each activity will be categorised as a lottery, a bet or a game and regulated appropriately under the Act or in the case of the National Lottery under the National Lottery Act etc 1993. The Act also provides for circumstances in which a product or arrangement is not to be caught as gambling, for example free draws or prize competitions.
- A4.4** Gambling may be offered by remote (for instance, internet, telephone) or non-remote means, provided the correct licence is held.
- A4.5** Due to the complexity of the legislation and similar characteristics of different gambling activity it is possible for a gambling product to satisfy the definition of more than one activity. There are provisions in the Act (sections 15, 16, 17 and 18) that deal with the overlap between different gambling activities and determine how they should be classified and therefore what requirements and rules they must meet.
- A4.6** Although products may have similar characteristics, the intention of the Act is that gambling products are classified only as a single type of gambling. The Act (and associated regulations, conditions and codes etc) then provide specific rules for how each type of gambling may be offered. Within the scope of this paper it is worth noting that the Act:
- places various limits on society lotteries
  - prevents betting on the outcome of the National Lottery
  - only permits lotteries to be run by and for non-commercial societies (excluding the National Lottery, which may be commercially operated, but primarily for the public good under permissions set out in the National Lottery Act etc 1993)
  - requires gambling to be offered in a fair and open manner.

## Appendix 5: Society lottery operating licence fees

### Non remote society lottery operating licences:

Annual proceeds			
	A Up to £100,000	B £100k - £500k	C £500k+
Application fee	£163	£244	£325
Annual fee	£348	£692	£1,458

### Remote society operating licences:

Annual proceeds			
	F Up to £100,000	G £100k - £500k	H £500k+
Application fee	£163	£244	£325
Annual fee	£348	£692	£1,458

### Ancillary remote operating licence (for operators with remote proceeds of less than £250,000 a year who also hold a non-remote licence):

Annual remote proceeds	
	Up to £250k
Application fee	£100
Annual fee	£50

Published June 2018

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## Society lotteries advice

Phase 2, January 2016

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### Introduction

You have asked the Gambling Commission, in its capacity as the Secretary of State's statutory adviser on gambling and its regulation, to provide advice on a range of matters relating to the Culture, Media and Sport Select Committee's report arising from its inquiry into society lotteries. The Commission has provided an interim report in October 2015 and now provides advice on the remaining questions.

This includes:

- raising the current limits on sales and prizes for small and large society lotteries and to what level
- re-introducing an expenses cap for the largest lotteries at 35%
- whether the minimum contribution to good causes should be reviewed and at what level this should be set
- whether the largest lotteries should pay 12% lottery duty if they do not return 32% of proceeds to good causes
- introducing a separate class of umbrella lotteries with separate limits on individual draws, annual sales and prizes and how best to structure such a class, for example through setting limits on prizes, limiting the number of lotteries that can join together or stipulating different limits on the constituent lotteries
- spreading the 20% admin requirements over an extended period, for example one year or three years.

The questions are dealt with in the order set out in the Department's letter, which explained the request for advice. For each, we have followed a common format. We have provided a short summary of key points related to that section before setting out further detail. In some areas, detail has been moved to appendices to aid reading and provide a focus on the answer to the question at hand.

**Note:** We have mostly kept to the technical definitions of large and small lottery, but where appropriate, have also addressed 'small' large lotteries. See Appendix 1 for expanded definitions.

# 8<sup>1</sup> Raising the current limits on sales and prizes for small and large society lotteries and to what level

## Summary

- 8.1** Under the Gambling Act 2005 there are two classes of society lotteries:
- small society lotteries, which must be registered with their local licensing authority
  - large society lotteries, which must hold an appropriate licence with the Gambling Commission.
- 8.2** Whether lotteries are small or large is determined by the level of proceeds (ticket sales) they achieve in either an individual draw or as an aggregate of all proceeds in a calendar year (see Appendix 1 for further information).
- 8.3** We consider the question for small society lotteries is somewhat different, given the differing regulatory regime and the lack of clamour for change. Our analysis shows that change would not have a significant impact in terms of those affected and that there is risk in placing more lotteries in the 'small' sector. The capacity (as captured by our survey of local authorities) for regulation at a local level is also an important point. It would be helpful to appreciate the level of risk that is acceptable to DCMS which will leave the Commission better placed to advise on appropriate limits.
- 8.4** The strategy we have adopted in addressing this question has been informed by two important factors. Firstly, DCMS officials have set the context for this advice by explaining their objective to ensure that any changes safeguard against the risk of detrimental impact on the National Lottery's ability to raise funds for good causes and at the same time to ensure that returns to society lottery good causes could be maximised and that the regulatory regimes should not be overly burdensome.
- 8.5** Secondly, the available evidence base that has informed this advice is poor, in that there is little evidence from which it is possible to draw accurate predictions about the likely impact of specific changes. We are thinking about how this evidence base could be developed and improved.
- 8.6** For these reasons we have proposed changes to caps to large society lotteries that are relatively minor with recommendations that the effects of these changes should be monitored to ensure that there are no unintended consequences.
- 8.7** In summary we are recommending that (for large society lotteries) the:
- prize percentage limit remains the same (10% of individual draw proceeds) and the prize limit that does not take account of proceeds remains the same (£25,000)
  - individual draw limit is raised by a limited amount, from £4 million to £5 million, which would also have the impact of raising the maximum individual prize limit to £500,000 (dependent on ticket sales)
  - aggregate proceeds limit is raised to the level suggested by lottery stakeholders, from £10 million to £100 million; and that
  - the impact of these changes is monitored.
- 8.8** We consider that the suggested changes would achieve the stated aims of DCMS and the Select Committee of allowing greater flexibility for society lotteries to raise money for good causes, whilst maintaining the protection of the unique space in which the National Lottery (TNL) operates.

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<sup>1</sup> Continuing numbering from the interim phase 1 report for consistency

## Detail

- 8.9** This section explains:
- the background to the limits
  - the current position for large society lotteries, including how any changes could be achieved
  - the current position for small society lotteries
  - data exploring the number of lotteries close to current limits
  - the benefits and risks of change
  - full recommendations.

### Society lottery limits - background

- 8.10** Society lotteries appear to have first been provided for in legislation, in Great Britain, within the Betting, Gaming and Lotteries Act, 1963. Prior to that, the Betting and Lotteries Act, 1934 provided that lotteries were unlawful unless they were small lotteries incidental to an event, private lotteries, or were granted specific permission under the Arts Union Act, 1846.
- 8.11** Part 3, Section 45 of the 1963 Act permitted society lotteries to be run and raise funds for charitable, sporting or cultural, or other non-commercial purposes; similar to the provisions for society lotteries under the Gambling Act 2005. The 1963 Act set out various conditions for those lotteries including limits on individual prizes, prize fund, ticket price, individual proceeds, combined proceeds, and expenses.
- 8.12** Under the 1963 Act, the conditions:
- set limits for individual prizes of £100 and limited the cost of a ticket to one shilling
  - capped proceeds of an individual lottery to £750 and if two lotteries were run for the same good cause at the same time, the combined proceeds could not exceed £750
  - stated that the whole proceeds after any deductions for expenses and prizes should be applied to the purposes of the society
  - stated that expenses could not exceed either the actual expenses incurred or 10% of whole proceeds whichever is less; and
  - the amount of proceeds given in prizes shall not exceed one half of the whole proceeds.
- 8.13** Therefore, it appears that society lotteries have been subject to limits since they were first permitted. We have been unable to uncover any references as to why these limits were put in place, but it seems sensible to assume that the purpose was simply to limit the scale on which they could be offered, whilst ensuring that they provided a return to the society (the purpose for which they were permitted). The reasons behind that are unclear, but could be linked to the mindset within society at that time about gambling.
- 8.14** Since that time, limits have stayed in place, although what they apply to and how they apply has changed. But, they continue to achieve the purpose of limiting the scale of society lotteries and ensuring that their purpose remains that of fundraising for good causes. Under the current legislation the limits for small society lotteries are as follows:
- cap on the proceeds of individual draws of £20,000
  - cap on annual proceeds of £250,000
  - cap on maximum individual prize of £25,000
  - requirement that a minimum of 20% is return to the purposes of the society
  - ability to pay reasonable expenses only.

- 8.15** And the limits for large society lotteries are:
- cap on the proceeds of individual draws of £4 million
  - cap on annual proceeds of £10 million
  - cap on maximum individual prize of £25,000 or 10% of the proceeds of the individual lottery draw (permitting a maximum prize of up to £400,000 for an individual prize, dependent on ticket sales)
  - requirement that a minimum of 20% is return to the purposes of the society
  - ability to pay reasonable expenses only.
- 8.16** For small society lotteries the limits in place represent the desire to limit the scale of those lotteries to ensure they remain lower risk and can therefore be regulated through a lighter regulatory framework at a local level.
- 8.17** For large society lotteries, the reasons for limits remaining today are closely linked to the National Lottery. When considering the creation of a National Lottery, Parliament decided on the basis of evidence available at that time that a single National Lottery, operated as a monopoly would be the most efficient way of raising funds for a wide range of good causes on a national scale. This has formed the basis since then for an agenda of policy makers to retain a clear distinction between that and other lotteries, with the aim of ensuring that it is in the best position to be able to fundraise on a large scale whilst permitting other good causes to be able to continue to fundraise at a lower level through lottery activity.
- 8.18** When the National Lottery etc. Act, 1993 introduced a National Lottery, it was the first time that an unlimited lottery had been permitted in Great Britain; and at the time there was some debate during the passage of the related Bill, regarding whether limits for smaller charity lotteries should be reviewed. We are aware that a triennial review process, looking at society lottery limits, was put into place and that through that and through the development of Gambling Act 2005 the policy intentions for retaining the limits on society lotteries were restated.
- 8.19** The last triennial review concluded in 2005 and was coupled with the gambling review that took place whilst developing the Gambling Act 2005. Through that, the review body (and others) recommended that the limits on the size of stakes, prizes and maximum annual proceeds of society lotteries should be removed, despite input from Camelot and others (for example National Lottery Commission) who preferred that the limits (or some form of them) were maintained. We advised that there was no regulatory reason under the Gambling Act to maintain the limits. We did not consider a change or removal of the limits posed any risk to the objectives of the Gambling Act 2005. Note that at that time, the Commission did not have the regulation of the National Lottery within its remit.
- 8.20** This proposal to remove limits was rejected by the then Government on the basis that:
- “removal of the current limits would allow charities to compete head to head with the National Lottery”.*
- 8.21** At that time, the Government instead doubled the proceeds limit for a single lottery to £2 million; the aggregate annual total for a single charity or local authority to £10 million; and the maximum possible prize to £200,000. Noting this, the review went on to recommend that removal of limits should be achieved progressively over time. DCMS also accepted that the limits should be capable of amendment by secondary legislation, and provisions for this were made within the Gambling Act 2005.
- 8.22** The society lottery limits were last amended in 2008, when the cap on individual lottery proceeds was doubled to £4 million, which also had the effect of doubling the maximum prize that could be offered. At that time it was concluded that there was no need to increase the annual proceeds limit as no one in the sector was anywhere near reaching the £10 million limit. There has been no triennial review since 2005.

**8.23** Since the introduction of the Gambling Act (September 2007), the lottery sector has seen year on year growth in proceeds (see the table below). However, it is difficult to determine whether this is due to the changes in the limits, other market factors such as the recession, or changes in attitudes of fundraising bodies towards offering a gambling product. What we can say is that each time the limits have been increased a proportion of society lotteries have grown in excess of the previous limits, with some coming close to the new limits.

Year	Total proceeds (£m)	% Change	#SLs	#ELMs
2004/05	141.1			
2005/06	138.7	-2%		
2006/07	163.8	18%		
2007/08	169.9	4%		
2008/09	178.7	5%	542	30
2009/10	195.0	9%	419	27
2010/11	208.1	7%	447	29

### Current position – large society lotteries

**8.24** To reiterate, the current limits on proceeds and prizes for large society lotteries are:

What is limited?	Amount:
Individual draw proceeds (ticket sales)	£4,000,000
Aggregate draw proceeds in a year	£10,000,000
Maximum individual prize	£25,000 or 10% of the proceeds of the individual draw (permitting a maximum prize of £400,000)

**8.25** In the first phase of our advice to DCMS we proposed that certain triggers could act as a prompt to review the limits. These would include taking account of the number of societies who were reaching or had reached the limits that are currently in place. Once triggered, we suggested a full review be carried out, where possible incorporating broader information, such as public attitudes and evidence of the limits restricting the abilities of the society to fundraise and therefore the activities of the good causes they support. Any review would also need to consider the potential impact on TNL.

**8.26** Having reviewed currently available data on those trigger points, it is apparent that unlike in 2008, there are now a number of operators who are close to (and in one case has exceeded – details below) the limits put in place. The sections below provide an overview of the current position, from the data we have available<sup>2</sup>.

### Individual proceeds

**8.27** In 2014, less than five societies had individual draw proceeds of over £3 million, with some of those draws coming close to the £4 million limit.

**8.28** Eight individual draws have been reported with lottery proceeds of over £2.5 million, and 28 reported proceeds of over £2 million. All of these lotteries returned at between 25% and 94% to good causes.

<sup>2</sup> It should be noted that the regulations require lottery information to be submitted no later than 90 days after the date of the draw. This means that at the time of collation, whilst some societies have submitted the information for the lotteries they promoted up to the end of September, other societies are still to submit their information.

## **Aggregate proceeds**

- 8.29** Since 2013, one society breached the £10million annual proceeds limits, and relevant action was taken by the Commission with regards to this breach. Eight operators reported annual remote and non-remote proceeds of over £8million, with some of those exceeding £9 million.
- 8.30** From January to September 2015, nine societies reported aggregated proceeds of over £7million, again with some reaching over £9million<sup>3</sup>.

## **Maximum prize**

- 8.31** Although we plan to explore the scope for collecting this data point in future, we do not currently collect information on the individual maximum prize offered, and so cannot provide a definitive breakdown of the number of lotteries reaching the limit. However, given the figures above, it appears that although some societies are reaching the proceeds limits, generally the amount spent on prizes remains low in all but the largest schemes (normally those run under an umbrella brand). One possible explanation for this could be due to the fact that for most societies, people participate because of an affinity with the good cause, and high prize levels are considered inappropriate by those participants; or due to the fact that the balance of expenses, prizes and return to the good cause does not accommodate a higher level of prize payout.

## **Evidence of impact on the National Lottery**

- 8.32** Relaxing the limits on prizes or relaxing the cap on proceeds would have the effect of enabling society lotteries to offer larger prizes to their players although little evidence is available from which it is possible to draw accurate predictions about the impact of changes. This is partly due to the focus in literature on ‘aspirational’ lotteries (or national lotteries), the relatively small size and fragmented nature of the society lottery sector in comparison to the National Lottery and the embryonic nature of research about consumer behaviour around potential crossover in terms of participation.
- 8.33** If jackpot size is a significant determinant of demand for lotteries, then it seems logical that relaxing the rules on jackpot size or proceeds would enable society lotteries to offer higher prizes, and the academic literature suggests that jackpot size does affect lottery demand at least within lottery games. That said, almost all of the available evidence relates to ‘aspirational’ lotteries that offer the chance to win life-changing prizes. Because of this, evidence from the National Lottery sector may not be directly transferable to society lotteries.
- 8.34** The impact of additional demand due to higher jackpots resulting from rollovers may not be a good indication of the impact of increasing prize limits for society lotteries because:
- rollovers are a temporary increase in the jackpot, whilst these proposals would create longer-term changes in jackpot size.
  - during a rollover, the effective prizes<sup>4</sup> decrease at the same time as jackpots increase. It follows that the increase in demand ascribed to jackpots may in fact be due to this fall in effective prices; and
  - the jackpot elasticity estimates do not directly relate to the society lottery market, which offers smaller prizes meaning that changes may have smaller proportional impact.

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<sup>3</sup> As of March 2015, there were 474 large society lottery operators. The large society lottery sector raised total proceeds of £437m from April 2014 to March 2015.

<sup>4</sup> Over the long term and over a large number of players, the average price of playing the lottery is the amount transferred to the lottery provider: The “effective price” is the face value of the lottery ticket less the proportion of the ticket value returned to consumers as prize money.

- 8.35** This raises the question about the magnitude of any changes in order to balance the Government’s current policy objectives for growth in the society lotteries market and protecting the National Lottery. Two studies on competition between the National Lottery and society lotteries followed the introduction of The Health Lottery (THL) in 2011. Neither found that the entry of THL had large effects on the Lotto sales, with varying estimates of impact between £1.7million per week (2.8% TNL sales)<sup>5</sup> at the top end, and a range between £40,000 and £305,000 per week<sup>6</sup> at the bottom end of the estimates. Both concluded the impact of the Health Lottery upon TNL as minimal, with the NERA report concluding that even taking Camelot’s biggest estimate, *“the reduction in returns to National Lottery good causes during the last three months of 2011 would have been less than half of the £8million that the Health Lottery raised for its charities”*.
- 8.36** On balance, the evidence indicates that changes to the limits of a magnitude outlined within this paper would require monitoring, but would be expected to have little impact upon TNL and can be summed up as follows:

*“In the context of society lotteries and the National Lottery in GB, the [academic] studies would suggest that whilst society lotteries offer a differentiated product with smaller jackpot prizes, substitution between the society lotteries and the National Lottery is likely to remain minimal.”*

*“Lifting restrictions on the society lottery sector may enable society lotteries to increase their sales but under existing conditions and therefore under small changes to existing limits the impact on the National Lottery is likely to be small.”<sup>7</sup>*

#### **How could any changes be achieved (large society lotteries)?**

- 8.37** The relevant limits are set out in Section 99 of the Act and associated amendment orders. Section 99 (11) permits the Secretary of State to vary any monetary amount or percentage detailed in section 99, and so changes to limits can be achieved through secondary legislation.
- 8.38** The limits are also detailed in the Commission’s *Licence conditions and codes of practice* (LCCP), and so that document would need to be amended to match any changes to the legislation. This is normally achieved following a period of consultation with relevant stakeholders.

#### **Current position - small society lotteries**

- 8.39** To reiterate, the current limits on proceeds and prizes for small society lotteries are:

<b>What is limited?</b>	<b>Amount:</b>
Individual draw proceeds (ticket sales)	£20,000
Aggregate draw proceeds in a year	£250,000
Maximum individual prize	£25,000

- 8.40** In order to gather information regarding the current scale of the sector, the approach to regulation and the views of local authorities of the proposals, we have conducted an informal survey of LAs, with 91 responses received. From these responses, 99% of LAs were able to identify the number of registrations they held on society lotteries, with the total number of registrations from this cohort at 12,225, an average of 136 societies registered per LA respondent.

<sup>5</sup> *“The Economic Case for one National Lottery – A report prepared for Camelot”*, Frontier Economics (2011)

<sup>6</sup> *“Assessment of Lottery Market Issues”*, prepared for DCMS and the Gambling Commission, NERA (2012) and *“What have we got to lose? How society lotteries could do even more for good causes”*, CEBR (2014)

<sup>7</sup> *“Review of the UK Gambling Market – Project Phase I For the Gambling Commission”*, NERA (2015)

- 8.41** Using this mean figure per LA it is possible to apportion a national estimate of approximately 51,617 society lotteries registered with LAs.
- 8.42** In terms of the types of organisation registering, fewer LAs were able to identify the proportion of their society lotteries which were registered charities, indeed only around 36% were able to provide a figure. Where known (and divulged in the survey) only 28% of registrations were identified as a registered charity.

### **Approach to regulation – monitoring potential breaches**

- 8.43** The feedback from LAs shows a similar monitoring regime in place across most authorities, whereby information on the percentage returned to the good causes and the size of draws held are submitted to the LA as the Act requires. From this point approaches vary, with some simply viewing the information submitted and filing. In a few other cases and for some of the larger LAs, this data is entered into a relevant computer system (Lalpac is mentioned). These databases provide a searchable record for historical records and presumably allow the LAs some form of automation when it comes to calculations for whether licence holders are approaching the proceeds thresholds etc.
- 8.44** Data from the survey also shows that currently around 6% of respondents stated that no monitoring takes place when it comes to the 20% threshold for returns to good causes, which rises to just over one-fifth of respondents who do not monitor the other restrictions, such as the annual or individual draw caps. In some cases it is simply not highlighted as a priority.
- 8.45** Other feedback received from LAs shows that in their view there is little requirement or indeed no appetite for the changes outlined by the Select Committee, questioning the proportionality of the recommendations made in this area.

*“Newly created small society lotteries will, and do, benefit greatly using the current system. Please do not try to fix something which is not broken”*

*“We do not have any major issue with the current arrangements and no issues have been raised by our licensed societies”*

### **Data related to number of lotteries currently close to existing limits, excluding prize info (not currently collected)**

- 8.46** As noted above, the Act specifies the current maximum for total proceeds at £4 million for a single draw or £10 million annually for combined draws for individual operators. It also states that individual lotteries with total proceeds of less than £20,000 (or £250,000 annually) do not require a Gambling Commission licence and should instead hold an LA registration.
- 8.47** Data from regulatory and lottery-specific returns shows that only a small number of individual lotteries come within 20% of the current individual lottery limit for large society lotteries. Indeed the data shows this has only applied to five draws in the four years until March 2015.

	2011-12	2012-13	2013-14	2014-15
# individual draws	10,866	12,396	12,716	13,516
# operators running lotteries	421	428	428	419
# operators within 20% of annual limit	-	3	5	7
% operators within 20% of annual limit	0.00%	0.70%	1.17%	1.67%
# draws within 20% of individual limit	-	-	3	2
% draws within 20% of individual limit	0.00%	0.00%	0.02%	0.01%

Source – Lottery returns (2011 to 2015)

Data only relates to large society lotteries

**8.48** In terms of the annual limits, although slightly higher than is the case for individual draws, the data reveals that a small cohort of operators sit within a threshold of 20% of the current £10 million for total proceeds, and although it applies to less than 2% of operators, this number has been increasing since 2011. Note this is a combination of a couple of national charities and some members of an umbrella scheme, so it is in fact both types and isn't limited to just one.

**8.49** Respondents to our LA survey indicated that the annual and single draw limits were not currently perceived as a problem, in fact in most cases reported that the limits were largely irrelevant given the small size of their registration holders.

*“Currently all Small Society lotteries registered are nowhere near reaching the limits set under the Act”*

*“In reality most registered lotteries get nowhere near the current limit”*

*“Proceeds for lotteries registered do not approach the limits set out in the legislation”*

*“My existing knowledge of the societies held indicate that the majority are all low level in terms of proceed making, raising hundreds rather than thousands per draw”*

**8.50** At the current threshold between LA registration and Gambling Commission licence, the following table shows the numbers of draws, which would be captured by any potential increase to small society lottery limits (i.e. could fall from the requirement of having a Commission licence to an LA registration). Note that this data relates only to those draws currently operated under a Gambling Commission licence.

(2014-15) Raising the individual draw threshold <sup>8</sup> to ...	to £25k	to £30k	to £40k
# Individual draws in scope*	11,183	11,451	11,939
% of total individual draws*	83%	85%	88%
Average extra per Local Authority	29	30	31

Source – Lottery returns (2011 to 2015)

\*Figures represent the number or proportion of draws that would potentially shift from being offered under an operating licence, they do not show the total number or percentage of draws that would fall to be a small society lottery as that data is not available.

**8.51** This data shows that the vast majority of individual draws (licensed as large society lotteries) generate total proceeds of <£20k (over three-quarters by number for each of the last four years), although this number has reduced slightly since 2011 as a result of work undertaken by the Commission to persuade some operators that they didn't require a Commission licence.

<sup>8</sup> These figures assume that all draws below the threshold would transfer to LA registration, in reality some of these will trigger the annual proceeds threshold so would still require a Commission licence.

**8.52** Increasing the individual draw threshold above the current figure of £20,000 would have the knock-on effect of increasing the number of societies, which would require an LA registration and correspondingly reduce the number of which required a Commission licence. With three scenarios outlined within the table above (raising the threshold to £25k, to £30k and to £40k), each row shows the number of draws that would fall into the scope of LA registration should the limit be changed. The table below provides the same picture, but based on individual operators and the annual threshold rather than draws.

<b>(2014-15) Raising the annual draw threshold<sup>9</sup> to ...</b>	<b>to £300k</b>	<b>to £400k</b>	<b>to £500k</b>
# operators in scope	161	203	235
% of all operators	38%	48%	56%
Average extra per Local Authority	0.4	0.5	0.6

Source – Lottery returns (2011 to 2015)

\*Figures represent the number or proportion of operators that would potentially shift from being offered under an operating licence, they do not show the total number or percentage of operators that would fall to be a small society lottery as that data is not available.

## **Benefits and risks of changes to the limits**

### **Large society lotteries**

- 8.53** The Commission remains of the view that removing the limits placed on the proceeds and prizes of large society lotteries poses no regulatory risks to the objectives of the Gambling Act 2005.
- 8.54** However, given the Government’s stated aims of maintaining and protecting the space in which the National Lottery operates there is a risk that changes to some of the limits could have an impact. Specifically raising or removing the individual proceeds limits and therefore individual maximum prize, and/or changing the percentage limit for the maximum individual prize could mean that society lotteries are able to compete in the space that has previously been reserved for TNL.
- 8.55** It is also worth considering the wider context of the market that the Commission will launch a future competition for the TNL licence in. A squeezed market could lead to a poorer competition.
- 8.56** Although the majority of society lotteries are ‘cause led’, there are a number of larger schemes that rely on higher prizes as a key marketing tool, for these schemes, the ability to offer prizes of a similar level to TNL would be seen as a benefit, as they argue that this would allow them to attract more players.
- 8.57** Raising or removing the annual aggregate proceeds limits alone should not have the same potential impact on TNL sales. This would be a way of achieving both the Select Committee and DCMS’ aims of ensuring a greater return to good causes across the lottery sector and increasing flexibility for society lotteries to raise funds. Society lotteries would have the opportunity to run more lotteries, which may increase competition, but retaining or permitting only a minimal increase to individual prizes and individual draw proceeds, would ensure that they continue to operate in their own space and do not pose a threat to TNL sales. It may also have the benefit of reducing the need for charities and other good causes to operate multiple (distinct) society lotteries, and therefore reduce administration and potentially cost.

<sup>9</sup> These figures assume that all operators below the threshold would transfer to LA registration, in reality some of these will trigger the annual proceeds threshold so would still require a Commission licence.

- 8.58** Historically some society lotteries have grown to meet the limits placed on them, certainly in recent years as the sector has attracted larger charities, with broader reach and bigger budgets. Whilst this is positive for the good causes supported by those lotteries (as fundraising ability increases), whatever limits are put in place will need to take account of that fact in order to reduce the risk of impact on TNL. There is the risk that removal of all limits or a large increase across all limits could result in a society lottery with the ability to rival TNL. Although such a scheme would require substantial investment and retail presence, they may have the benefit of being associated with a specific good cause, which could increase the risk to TNL sales and therefore returns to the broadest range of good causes.
- 8.59** Finally if any changes reduce the number of licensed society lotteries, but not the scale those lotteries are able to achieve, we may need to consider our fee bands as this would reduce the income related to that sector. The Commission would need to consider whether the current fee levels reflect the resource involved in regulating such lotteries.

### **Small society lotteries**

- 8.60** As noted above, small society lotteries are regulated under a lighter touch framework than large society lotteries because of their limited scale. This framework allows small charities and other organisations to operate lawful lotteries, at a minimum cost and a low level of regulatory burden. The benefit of increasing the limits for small society lotteries would be that this approach is extended to more lottery operators, who may be able to move from a Gambling Commission licence, to a local authority registration (subject to the other restrictions for doing so, which the Act puts in place).
- 8.61** However, the Commission considers that this move may pose increased risks, particularly in relation to the local authorities' capacity to regulate an increased market. Local authorities are paid low fees to both register and monitor lottery operations on an annual basis and so funds for the regulation of lotteries are limited and it is unlikely to be viewed as a priority area. We know from the survey and other feedback, that many do not have the capacity (particularly in light of other financial cuts) to actively regulate these operators; investigate issue or take action if required. And that where monitoring does currently happen it is relatively limited (as intended by the current framework). The DCMS should consider whether the benefits of extending the limits are outweighed by the lack of regulatory scrutiny that may subsequently apply to the proportion of the market that would fall to be regulated by LAs should changes be made. And if changes are made, what their appetite for that is, for example is it comfortable with over 50% of the market currently operating under a Commission licence transferring to an LA registration with the resultant reduction in regulatory oversight (see table above).
- 8.62** Another consideration is the current regulations, which state that once a lottery is a large lottery it cannot return to small society lottery registration until four years have passed since the lottery met the thresholds, which required them to hold the licence<sup>10</sup>. Government would need to consider how to apply the new limits and contend with this requirement. We suggest that any transitional arrangements would need to clearly articulate how a licence requirement that was triggered under the old limits would be treated. For example, would the four year period be waived for those that had never reached whatever new limits are set.

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<sup>10</sup> Schedule 11, Part 4, section 30 (5)

## **9 Re-introducing an expenses cap for the largest lotteries at 35%**

**Whether the minimum contribution to good causes should be reviewed and at what level this should be set**

**Whether the largest lotteries should pay 12% lottery duty if they do not return 32% of proceeds to good causes**

### **Summary**

- 9.1** These three questions have been brought together as they follow a common theme of seeking to increase the rate of return from society lotteries to good causes, from the three different perspectives.
- 9.2** While in each instance the application of the proposals to the current environment would bring theoretically an increased return, there are a range of potential unintended consequences that should be considered before looking to implement such change:
- a. that commercial flexibility will be hampered and, as a result, innovation and growth restrained
  - b. it is very difficult to understand what the 'perfect' rate to stimulate growth and return the maximum to good causes where the case studies are all very different in make-up and approach
  - c. in isolation or combination the proposals could unintentionally lead to a decrease in return to good causes, due to declining player interest
  - d. it is not clear what benefit the proposals would bring compared to the cost of introduction and additional regulatory burden.

### **Detail**

- 9.3** This section explains:
- the current and previous regulatory framework
  - the potential impact of each proposal
  - the changes that would be required
  - observations.

### **The current and previous regulatory framework**

- 9.4** During the passage of the Gambling Bill the Government decided to relax the specific requirements on the percentage of proceeds that could be used for expenses and prizes while maintaining the requirement that a minimum of 20% of the proceeds must be applied to the purposes of the promoting society, thereby maintaining the existing 80-20% ratio. The rationale for the relaxation was that this would allow societies to grow and maintain their lotteries by allowing them flexibility to decide what proportion proceeds to apply to expenses and prizes. The current requirements in the Act are set out at Appendix 2.
- 9.5** There is no firm evidence available but it is likely that the relaxation of the expenses limits contributed to making the society lottery sector commercially viable for ELMs. The involvement of ELMs benefits charities and other societies by enabling them to outsource the administration of their lottery to professional lottery operators who can use their knowledge and expertise to maximise proceeds and as a result increase the return from the lottery to the good causes those societies exist to support.

- 9.6** Since the Act came into force in September 2007 the number of licensed ELMs has increased from ten to nearly forty. Proceeds in society lotteries have increased from £178 million in 2008/09 to £437 million in 2014/15. In the same period the proportion of lottery proceeds ELMs were involved in raising increased from £36 million to £231 million.

### **Potential impact of proposals**

#### **Defining a large society lottery**

- 9.7** The Act defines a small society lottery at schedule 11 as one where the proceeds are less than £20,000 in a single lottery or £250,000 in cumulative lotteries in a calendar year. Small society lotteries are required to be registered with a local authority. By default large society lotteries are those with proceeds above those limits and they are required to be licensed with the Commission.
- 9.8** Only a small number of society lotteries licensed by the Commission have proceeds of more than £5 million per year (ie more than half of the maximum proceeds limit of £10 million). In 2015 only 16 licensed societies had proceeds in excess of £5 million. Some brand schemes, where multiple societies combine under a single lottery brand can result in those brand lotteries as a whole exceeding the annual aggregate maximum total proceeds but the individual societies participating under those brands are all well below the maximum limit, as currently allowed.
- 9.9** Societies could fragment into smaller entities to avoid being caught as a large licensed lottery, for example a charity with different aims and objectives could set up genuinely separate societies to fundraise for each of those different aims and objectives.

#### **Cap expenses at 35% for large lotteries.**

- 9.10** The proposal is intended to increase the return to the good causes by limiting the amount a large society can spend on promoting the lottery and ensure against a lottery being primarily run for commercial profit.
- 9.11** A limit on expenses does not necessarily mean that the return to good causes will increase, since it may be the case that ticket sales will fall or the society will have to increase prizes to sustain participation in the lottery. The previous legislation (the 1976 Lotteries and Amusements Act) set out strict limits on the expenses of large lotteries and the then regulator, the Gaming Board of Great Britain (GBGB), scrutinised the expenses of each lottery in detail. The proceeds in society lotteries and the funds going to good causes have significantly increased since the relaxation of the expenses limit under the 2005 Gambling Act. Details of the previous arrangements are set out in Appendix 2 and 7.
- 9.12** Many large lotteries have significant marketing costs including television and newspaper advertising and rely heavily on this to generate sales. This model has proved successful for them by increasing tickets sales. TV advertising is costly but effective and, operators would argue, necessary to maintain and grow their lottery.
- 9.13** A cap on expenses may also prevent or inhibit new large lotteries developing as marketing costs are often high at the start and it can take a number of years for a lottery to establish itself. There is a risk that a cap on expenses for large lotteries could potentially have the effect of reducing the overall return to good causes from society lotteries. The increase in number of licensed societies post Act implementation strongly supports the view that a relaxation of the caps on expenses encouraged growth in the sector.

### **Increasing the 20% minimum statutory return for large established society lotteries**

- 9.14** The proposal's aim is to increase the percentage of proceeds going to the purposes of each promoting society in large established lotteries by reducing expenses and prizes once the lottery becomes established.
- 9.15** Some society lotteries could potentially see a reduction in proceeds if they are required to offer a higher rate of return as the usual consequence of this would be to reduce prizes or expense levels and this could detrimentally impact on marketing capability and impact and so reduce ticket sales.
- 9.16** Apart from start-up lotteries and those with high expenses, including marketing costs 64 (15%) established lotteries operate at the 20% minimum return rate.
- 9.17** On average, society lotteries licensed by the Commission regularly return over 40% of the proceeds of their lotteries to their aims and objectives. Smaller society lotteries licensed by the Commission such as hospice lotteries, air ambulance charities and other local societies generally return a higher percentage of proceeds to their aims and objectives once they are established. Those small lotteries tend to offer smaller prizes and have lower operating and marketing costs because their business model relies on local support and in some cases unpaid volunteers.
- 9.18** Larger lotteries licensed by the Commission, such as national charities and some ELMs and brand schemes which promote their lottery nationwide generally have higher operational and marketing costs. For example a national charity that decides to promote their lottery on a large scale to supporters through a direct mail campaign will incur marketing, printing, postage, response handling and other administration costs. In some of those large lotteries, although the percentage return to the aims and objectives of the society may be 20%, the actual proceeds collected will be significantly higher than in a small locally promoted lottery. We have examples whereby organisations give 90% but raise thousands against organisations that give 20% yet raise tens of thousands (and this is outside of context of ELM run branded schemes).
- 9.19** The development of new products such as scratchcard lotteries, which are increasingly being promoted by societies, could be harmed by an increase in the 20% requirement, since these types of lotteries are usually more costly to promote in respect of costs such as printing and they require a higher prize ratio to succeed.
- 9.20** In summary, our assessment, based on the evidence available is that an increase in the minimum 20% return for large established lotteries could result in a fall in the overall return to good causes from society lotteries. This is primarily because prizes may have to be reduced, which could make the lottery less attractive to consumers, or expenses such as marketing would have to be reduced, which could impact on ticket sales.

### **Applying 12% lottery duty to large lotteries returning less than 32% to good causes**

- 9.21** The rationale for this proposal is to bring some society lotteries in line with the National Lottery and increase the rate of return to good causes.
- 9.22** It should be noted that some contributors to this debate have assumed that 12% lottery duty would be paid over to good causes. We should note in that vein that, of course, if the example of the National Lottery is followed the duty will pass to the Exchequer rather than to good causes. It would be a matter for the Government (notably HM Treasury ministers) to decide how any extension of lottery duty to other lotteries were distributed.

- 9.23** Leaving that matter aside, our assessment of this option is that there may be unintended consequences. By way of example, there must be a risk that a lottery currently returning, say, 30% to good causes might on the introduction of lottery duty reduce the amount returned to 20% in order to minimise the increase over and above their current position <sup>11</sup>
- 9.24** Applying lottery duty may also have a disproportionate negative effect on societies who return just under 32% of proceeds to good causes, for example a society that returned 30 or 31% to good causes would, after paying 12% lottery duty have 57-58% of proceeds remaining to spend on prizes and expenses, this would reduce flexibility for some societies to offer a range of different prizes in future and existing lotteries.
- 9.25** It could also have the impact of limiting marketing costs if a society wanted to launch a new fundraising lottery campaign.
- 9.26** The Commission's understanding is that societies who are charities and other organisations that exist to raise funds for purposes other than private or commercial are exempt from most forms of taxation. However it is worth noting that External Lottery Managers (ELMs) are commercial businesses and they pay VAT and Corporation Tax in line with other types of businesses which are required to do so. Where a society contracts an ELM to make the arrangements for their lottery on their behalf the fee the society pays the ELM for carrying out that work will include an element of cost reflecting the tax the ELM pays, therefore it might be argued by some stakeholders that societies indirectly pay tax already.

### **Changes that would be required to legislation**

- 9.27** If it is decided to implement these proposals changes would be required to the Act. Alongside changes to the Act complex changes to the regulatory framework would be needed to ensure and monitor compliance. Those changes would include:
- changes to primary legislation to create a new category of lottery proposed
  - changes and additions to the mandatory licence conditions at section 99 to cap expenses for large 'established' lotteries at 35% and/or to increase the minimum percentage return to good causes for large established lotteries
  - changes to the tax regime to require large lotteries returning less than 32% to good causes to pay 12% lottery duty
  - the Licence Conditions and Codes of Practice (LCCP) would require amendments to reflect the changes in the Act. As well as changes to licence conditions and codes changes would be needed to the nature of information that societies and ELMs would be required to provide to the Commission
  - any introduction of a new licence type would also require a change to the Fees Regulations to reflect the new category of large licensed lottery
  - potential change to section 254 to provide ability to use lottery proceeds to pay lottery duty (unless this is classed as an expense).

### **Observations**

- 9.28** There is a clear risk that the proposals would not achieve the stated aim of increasing the return to good causes from society lotteries. Any cap on expenses, increasing the required return to good causes or introducing lottery duty for large licensed lotteries would limit flexibility for societies to best decide how to apportion expenses and prizes in different types of lotteries. It could inhibit the development of large lotteries promoted by societies or ELMs acting on their behalf and ultimately have a negative impact on the overall return to good causes.

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<sup>11</sup> proceeds can only be used for good causes (min 20%), prizes and expenses so if the Gambling Commission element was reduced the excess would need to be accounted for somewhere – would the society allocate 12% to expenses (with lottery duty then seen as an expense)?

A cap on expenses would also contradict the previous policy decision to abolish the limits on expenses, which was agreed during the passage of the Gambling Bill to allow greater flexibility for lottery promoters to decide how best to apportion proceeds.

**9.29** In general society lotteries are considered to be low risk in terms of the licensing objectives set out in the Act. The proposals would involve developing a complex set of regulatory requirements and regime to monitor compliance, potentially resulting in increased costs and the Commission would need to consider impact on what we charge for the regulation of the sector. It would also impose additional and complex requirements on society lotteries that would do little to mitigate the perceived risk to the licensing objectives that society lotteries represent.

## **10 Introducing a separate class of umbrella lotteries with separate limits of individual draws, annual sales and prizes and how best to structure such a class, for example through setting limits on prizes, limiting the number of lotteries that can join together or stipulating different limits on the constituent lotteries**

### **Summary**

- 10.1** Our understanding is that the concerns raised around the larger umbrella brands are based around the appropriateness of such schemes, given the original policy intention of society lotteries. This is with particular regard to the transparency of funds processed, especially expenses and how this may link with connected companies. There is also concern with regard to the potential damage caused to TNL returns to good causes.
- 10.2** It is worth noting the context of umbrella brands within the society lottery sector as things currently stand:
- a. all activity is legal and regulated under existing legislation and regulatory requirements. This includes rules related to transparency and expenses
  - b. the two largest schemes account for nearly 40% of returns from a sector which has grown generally at the same time
  - c. while views vary it is likely, on our assessment of the evidence available, that there has not yet been a significant impact on TNL from the schemes
  - d. it is difficult to predict the future risk on TNL, noting there have been no new entrants of significant size since the Health Lottery (THL) in 2011 although People's Postcode Lottery (PPL) has grown significantly in that time
  - e. the lack of the ability to offer an 'NL-sized' prize limits the interest in such a market
  - f. all fundraising has a commercial element whereby they contract third parties to conduct certain services on their behalf – this sector is no different
  - g. small umbrella schemes enable a wide range of societies to benefit from more professional and efficient fund-raising
  - h. the Commission monitors the compliance of a society or external lottery manager (ELM) in how it operates its schemes to ensure they remain compliant with the regulations.
- 10.3** The introduction of a separate class could be made for large umbrella schemes but our view is that this would be complex to introduce, disproportionate in terms of regulatory time and burden, and have potential unintended consequences, including possibly decreasing the amount raised for good causes overall.
- 10.4** We do however think that other changes, alongside retaining a small top prize level discussed elsewhere, could address the concerns raised:
- a. introducing further licence conditions relating to transparency and reasonable expenses, based on previous Commission advice
  - b. limiting the amount that can be paid out on an individual win – to prevent prize aggregation
  - c. applying additional conditions to potentially limit the overall amount raised by umbrella schemes (noting the difficulty is setting such an amount).

### **Detail**

## **Context and concerns about umbrella brands**

- 10.5** It is important to understand the context and concerns regarding umbrella brands, which have led to the proposals put forward for consideration by DCMS. Information about current umbrella brands operated under Gambling Commission operating licences is included in Appendix 1 and 3. Further relevant information can be found in Appendices 5 to 7.
- 10.6** There is no prohibition on lotteries being promoted under a single umbrella brand and other than a requirement to operate the lottery in a fair and open manner, no other legislative restrictions specifically aimed at such schemes. There is also no prohibition on societies being set up with lotteries as the sole means of income, providing that the proceeds are used for the purposes of the society, and the societies are not run for commercial or private gain.

### **Market**

- 10.7** The removal of the caps on expenses and prizes during the transition to the current legislation gave societies the freedom to invest in lotteries as a means of fundraising, growing annual proceeds from £139million in 2005/06 to £206million in 2010/11 - thus changing the market from a stagnant to a thriving one.
- 10.8** The statistics available to the Commission on branded lottery schemes shows that umbrella schemes accounted for a significant proportion of the lottery market in 2014-15. Whilst slightly less than the previous year's figure, this has remained fairly static. This may suggest that there is a saturation point for umbrella brands, with the cap on prizes and specific nature of each good cause<sup>12</sup> key factors in limiting the market.

### **Transparency**

- 10.9** In the Commission's mind, whilst the umbrella brands currently operating do so within the constraints of the Gambling Act ('the Act'), historically there has been concern that the way some brands operate is not done so in the spirit or the intent of the Act. There have also been concerns around the 'commerciality' of umbrella brands, particularly with regards to the expenses claimed by ELMs for managing the lotteries promoted under such schemes and how expenses may support connected businesses.
- 10.10** Questions have been raised previously regarding the transparency of umbrella schemes, in terms of the societies promoting lotteries within the schemes, the proportion of proceeds attributed to expenses (including ELM fees and marketing) and the proportion attributed to good causes. This is not an exception, as transparency is important for all societies regardless of whether participating in umbrella schemes or not, and the Commission scrutinises business plans at application stage as well as the breakdown of lottery proceeds reported in lottery submissions.
- 10.11** The Commission has published advice on umbrella schemes and ELMs promoting lotteries, which should be taken into account by both new and existing operators when conducting their lottery activities. This advice is also used to assess the compliance of the applicant with the second licence objective.

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<sup>12</sup> The good cause element both attracts and repels players who actively choose which lottery to participate in on the basis of the good cause involved

- 10.12** Transparency regarding the fees paid by societies for the promotion and management of lotteries through umbrella brands is rooted in the ‘reasonable expenses’ test. The Act does not define what is deemed to be an expense ‘reasonably incurred in organising the lottery’ and what is deemed reasonable to one society may not be regarded as reasonable to another.

### **Commerciality**

- 10.13** Society lotteries, as for most charities, have always involved a commercial element, in that they have always been permitted to engage third party commercial entities to undertake certain activities such as ticket selling, ticket printing, creating adverts, conducting telesales and managing all or part of the lottery process (as ELMs). Such parties are usually commercial and provide services on the basis of making a profit on this service. ELMs, when promoting lotteries through umbrella brands are no different. It would be difficult to ascertain whether an ELM was providing a service at a rate above the accepted ‘going rate’, although more could be done to require societies to provide details on the expenses of the lottery, in terms of a breakdown of ELM fees, marketing costs, printing costs – and also for ELMs to provide a breakdown of their expenses and costs as part of their regulatory returns. They are already required to provide details of their ELM fee as a percentage of the proceeds they have collected on behalf of societies.

### **Regulatory burden**

- 10.14** Care has to be taken to balance the issues and risks against a possible increase in regulatory burden. To monitor or cap umbrella schemes will ultimately increase the regulatory burden on the societies who participate in such schemes, and an increase in monitoring by the Commission will ultimately impact on the fees charged to these societies as well as fees for the ELMs who manage them.

### **The future**

- 10.15** It is difficult to predict the future growth of umbrella branded lotteries. As referenced in this paper, the cap on prizes and the resources required to set up and market umbrella schemes is prohibitive to most interested parties. Since the launch of THL in 2011, there have been no ‘big players’ enter the sector<sup>13</sup>, and the umbrella schemes that have launched have been relatively small scale with prizes limited to £25,000 or less. DCMS may wish to consider introducing measures which look to limit the risk of new schemes emerging in the future rather than limiting the existing schemes already in operation. This could be achieved through enhanced licence conditions that limit the scope of umbrella brands to prevent ‘stacking’ of high numbers of societies operating in the same brand, all raising the maximum in proceeds. Enhanced conditions could also incorporate the advice already in place for operators of umbrella schemes which require these operators to go further in ensuring transparency to players.

### **The current regulatory framework**

- 10.16** The Act currently allows for three types of lottery operator – society lottery, local authority lottery and external lottery manager (ELM). All three can promote lotteries through an umbrella or branded scheme – although ELMs are only permitted to manage lotteries on behalf of societies or local authorities.
- 10.17** There is no legislative prohibition on society lottery operators coming together under a single brand and the results in those lotteries being determined by a single draw. However, the individual lotteries must remain separate, distinct entities.

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<sup>13</sup> Postcode Lottery has however grown considerably in recent years.

- 10.18** The Commission does not approve lottery schemes, but will intervene where they deem a lottery or lottery scheme to be non-compliant. The Commission does not assess the commercial viability of lottery schemes, but will assess during the licence application stage whether the applicant is able to provide reassurances and evidence of risk management to militate against a lottery failing to attract sufficient players to be able to pay out prizes and return at least 20% to the good causes. In such cases, the Commission will ask for evidence of how the applicant would address such an incident, should it occur, as the first call on lottery proceeds must always be the minimum 20% to stated good causes.
- 10.19** The Act does not impose specific regulatory restrictions on lotteries which form part of umbrella schemes, outside of the limits applicable to small and large lotteries in general. ELMs as commercial organisations do not have limits placed upon them in the same sense as society lottery operators do, although they are required to ensure the single lottery and aggregate annual proceeds limits for each society participating in their scheme are adhered to. As both the society and ELM are regarded as jointly promoting the lotteries, both are responsible for ensuring proceeds and prize requirements are met. This is particularly important for societies whereby they operate individual lotteries alongside a branded scheme, or use multiple ELMs for different lottery activities.
- 10.20** Under the current regulatory framework, the Commission currently requires society lottery operating licence holders to submit a breakdown of lottery proceeds within 90 days of the end of the lottery, and this information must include the following:
- date of the lottery or (in the case of instant lotteries) the last date on which tickets were available for sale
  - total proceeds (and the division by remote and non-remote sales)
  - cost of tickets
  - expenses
  - prizes paid out from proceeds
  - amount allocated from prizes, that is rolled over to a future lottery
  - rollover prizes paid out
  - amount allocated to the purposes of the promoting society.
- 10.21** The Commission does not currently collect data on single prize payouts, only the aggregate prize totals. It does not collect data on any donated prizes or expenses of the lottery that are not accounted for from the proceeds of the lottery.
- 10.22** The Commission could require societies to provide more lottery details on donated prizes and the top single prize payout, expenses not accounted for from lottery proceeds, whether a specific lottery was part of an umbrella brand, as well as whether an ELM managed all or part of the lottery. The Commission would need to justify that this information was proportionate in terms of managing the risk to the licensing objectives – particularly with regards to transparency in use of lottery proceeds.
- 10.23** Small society lotteries do have to record on their lottery submission to the licensing authority all details related to donated prizes, expenses not deducted from lottery proceeds (and the sources from which they were paid). They should also record the date on which tickets were available for sale or supply.

## Changes that would be required to legislation

**10.24** Any new legislation for umbrella or branded lotteries would require changes to primary legislation. Alongside these changes, it would be probable that complex changes to the regulatory framework would need to be introduced to monitor compliance. Such changes include:

- Any introduction of a new licence type or category of ELM licence, which would impact on the current fees review, and require a change to the Fees Regulations. The fees charged by the Commission can only be amended through a statutory instrument laid with Parliament. Neither the Commission nor DCMS have the discretion to adjust any aspect of the fees structure until a statutory instrument has been laid and has come into effect.
- Monitoring the proceeds from umbrella lotteries separately to those from other lotteries through lottery information returns and regulatory returns. There is currently no requirement for operators to report on umbrella lottery proceeds separately. The Commission is undertaking a review of the information provided by operators in regulatory returns, so any changes brought about by the proposals could be effected through this, following appropriate consultation with the industry.
- Monitoring of umbrella schemes separately to other lotteries managed by ELMs activities. Depending upon the level of scrutiny, this could increase the costs of regulation to the ELMs themselves as well as the Commission, which could impact on the Commission fees charged to ELMs as well as the cost to the ELMs of operating such schemes - both increases would ultimately impact on societies. It could also be regarded as the Commission micromanaging lotteries and question whether the Commission was drifting into the role of approving lottery schemes, rather than assessing the operators themselves.
- Major amendments to the current data capture systems operated by the Commission, including the lottery information system and regulatory returns system. Dependent on changes introduced, it is possible that reporting by ELMs would be required more regularly for umbrella lotteries, perhaps in a similar format to the lottery information reporting currently required for societies.
- *Licence conditions and codes of practice* (LCCP) would require amendments both in relation to the statutory changes to the Act, as well as changes to relevant conditions and codes regarding the nature of information that societies and ELMs would be required to provide to the Commission, in order for it to undertake its regulatory function. This would require a full consultation with the industry before being introduced.

## Potential issue/benefits of each proposal

### Ease of common changes to varied sector

**10.25** Umbrella schemes can operate in a number of ways. For example:

- schemes only run a single society lottery at any one time, with all participating societies promoting their lottery in rotation (Health Lottery and Postcode Lottery operate in this manner) and players will either register for a regular subscription in all lotteries regardless of the society, or choose which lottery they will participate in
- multiple societies can all participate at the same time each week, with their own specific players. Usually a single draw will determine the outcome of each of the lotteries – these types of schemes usually have prizes below £25,000 as the number of participants in each society's lottery is generally low.

**10.26** Proposed changes to the regulatory framework will impact on each type of scheme in different ways.

- 10.27** Whilst Health Lottery and Postcode Lottery operate on a large scale, offering top prizes above £25,000, there are (as outlined in Appendix 3) a wide number of other umbrella schemes that are available that – should restrictions be imposed to limit the larger schemes - would impact on societies’ ability to enter the lottery market in a safe and risk-free manner. It is discussed further in 10.44 that umbrella schemes can aid societies in building their player base before launching their own lotteries as well as providing a small but valuable source of income for smaller organisations who don’t have the resources to run a lottery themselves. Some schemes have a large number of societies registered with their branded schemes that hold local authority registrations rather than operating licences, as they are small local organisations rather than national charities. To introduce stringent caps on umbrella schemes may curtail the size and scale of the larger schemes, and could consequently result in those schemes marketed to smaller or start-up societies also being reduced. There is a risk therefore that such societies will be prevented from maximising their potential to raise money through lotteries for their own good causes.
- 10.28** Any new legislation for umbrella or branded lotteries would require changes to primary legislation. Alongside these changes, it would be probable that complex changes to the regulatory framework would need to be introduced to monitor compliance.

### **Introduce a new class of capped umbrella lotteries**

- 10.29** The Commission has not seen an increase in the number of ELMs offering large umbrella schemes similar to THL, although new smaller schemes have entered the field, aimed at attracting small societies or existing societies with specific aims. The introduction of a new class of lottery specifically for operating umbrella schemes would allow the Commission to monitor the growth and prevalence of such lotteries; and assess the risks of these on the licensing objectives and impact on TNL. DCMS could ask the question of whether monitoring of schemes could more effectively be carried out by more detailed reporting of umbrella schemes to the Commission through the regulatory returns system.
- 10.30** A new class of lottery however would need to be considered with regards to the impact on the societies themselves. The Act does not prevent a good cause from holding an ELM licence, nor does it prohibit a number of societies joining together under a single brand to promote their own lotteries collectively and benefit from the sharing of administration and marketing costs. For example, a charity could apply to the Commission for lottery licences for three new distinct societies within its structure to maximise its fundraising. In this example, the charity itself already holds a society lottery licence but is close to the annual proceeds limits, and so is setting up an umbrella lottery scheme under which to promote its weekly lottery and annual ‘bumper draw’.
- 10.31** The introduction of a new class of capped umbrella lotteries would raise a number of other issues and questions:
- a. Would a scheme such as that referenced above be considered an umbrella lottery, and would all societies therefore be required to obtain an umbrella licence each? Any legislation would need to be clear on what determines a series of lotteries to be an ‘umbrella’ or ‘branded’ scheme. Would two hospices joining together to reduce expenses and maximise returns be considered an umbrella scheme (such as – for example – a Westminster Hospice Lottery to raise funds for an adult and a children’s hospice within the Westminster area)?
  - b. Should one society also run its own annual Christmas lottery, would they also need a society lottery operating licence (or two, if the lottery is operated by both remote and non-remote means)? Potentially, a society would then require up to four licences, with the associated regulatory reporting requirements and annual fees.

- c. The Commission would require societies and ELMs to identify which lotteries were umbrella lotteries and which ones were conventional lotteries. The regulatory returns provided by lottery operators do not currently monitor the proceeds breakdown as this information is already collected through the individual lottery reporting system – whereby each society is required to submit the proceeds breakdown for every lottery conducted. The current system utilised by the Commission would require significant changes in order to record what type of lottery was conducted (and which scheme the lottery was part of) in order to track proceeds against the society’s licence category. This would be at considerable expense to the Commission, increased administrative activities for the societies and ELMs, and would require consultation with the industry with regards to changes in reporting requirements and licence conditions.
- d. Whilst there is no regulatory requirement to only promote umbrella schemes for one type of society (small ‘registered’ societies or large ‘licensed’ societies) there is a risk of further complicating the regulatory regime for ELMs - who may promote umbrella schemes and general lotteries to both small and large societies - as well as the societies themselves, as they would all be required to keep separate records for each type of lottery promoted. This would place an increased regulatory cost and administrative burden on societies – particularly if they promote their lotteries as part of a larger scheme but have relatively low levels of participation.

**10.32** Rather than introduce a new class of lottery for umbrella lottery schemes, DCMS could ask the Commission how it could most appropriately manage the risks, working with the current regulations in place. One such risk is a new ELM entering the market, with considerable resources, and introducing a new umbrella schemes which effectively ‘stacks’ the aggregated proceeds permissions. Whilst unlikely, this risk could be managed by way of additional licence conditions included in the LCCP for societies and lottery managers to limit the amount of proceeds permitted for a single umbrella brand, or cumulatively for all branded schemes managed by an ELM. This would effectively limit the impact of umbrella brands whilst still permitting those brands that are designed to support smaller societies in raising funds through lotteries. By limiting the brand rather than the societies, the regulations would permit societies to continue with other lottery initiatives whilst limiting the scope for ELMs to effectively ‘stack’ permissions in order to operate a single large branded scheme.

**10.33** DCMS should consider the level of cap that it and other stakeholders think would still deliver the stated aims of allowing greater flexibility for society lotteries to raise money for good causes, whilst maintaining the protection of the unique space in which the National Lottery operates. For existing umbrella brands, any changes to the Act or regulatory framework could risk them having to curtail current lottery activities and thus reduce their capacity to raise money for good causes through lotteries.

**10.34** DCMS may wish to give consideration to what exactly it regards the primary risk to be – is this of umbrella brands in general, brands that capitalise on greater economies of scale in order to offer higher prizes, or brands involving large numbers of societies which collectively achieve annual proceeds in excess of the limits imposed on single society lottery operators?

### **Limiting the overall amounts that may be raised or paid out in prizes**

**10.35** Introducing a cap on the amount that could be paid out in prizes in umbrella schemes may limit the attraction to those lotteries that offer ‘life enhancing’ prize levels, at the expense of the amount allocated to the purposes of the society. However, the current legislation already limits prizes to £25,000, or 10% of lottery proceeds (up to £400,000). Whilst umbrella schemes can take advantage of economies of scale, if managed by an ELM with significant resources to put into marketing, they are still restricted by the current limits.

In reality, only Health Lottery and Postcode Lottery currently offer prizes routinely above £25,000 through umbrella lottery schemes, as few umbrella schemes have the number of players supporting each individual society playing in the scheme.

- 10.36** Whilst capping the amounts that can be paid out in single prizes could affect the Health Lottery and Postcode Lottery, the societies and ELM could potentially still lawfully circumvent the regulations, for example by offering double chances or additional draws to effectively permit a person to win twice. The current legislation only refers to a cap on a single prize, rather than reference to the aggregated amount an individual (or group of winners in the case of a syndicate) can win.
- 10.37** Capping the amount that can be raised through an umbrella scheme to restrict the total proceeds raised to those applied to a single society would limit the impact of the scheme itself. DCMS should be mindful that this would not in itself prevent an organisation setting up multiple different umbrella schemes (Umbrella 1, Umbrella 2 for example) unless the cap was applied to the aggregated amount for all umbrella schemes promoted by a single entity or collective group of entities. It would not prevent an ELM from setting up separate distinct companies within its structure to manage each scheme – so whilst the intention may be to limit the scope for prizes paid out and profit made by ELMs, the reality may be that the prizes and profits remain unchanged but spread over a larger number of ELM licence holders. The consequences of this would also cascade down to the societies themselves, in that – in order to maximise their funds for good causes – they have multiple contracts and complex arrangements with different companies.
- 10.38** When addressing the proposal of applying monetary proceeds and prize caps to schemes or operators DCMS may wish to consider the following questions:
- whether an increase to this current cap on prize limits for individual lotteries would impact on the amount allocated to good causes from lotteries run through umbrella schemes
  - if the issue in question is primarily that umbrella schemes may offer a higher prize and a lower percentage return (whilst still meeting the minimum 20% requirement) in an attempt to encourage more players to join the lottery
  - if the actual monetary value to good causes was to increase as a result of larger prizes, would the fact that a lower percentage was attributed to lottery profits be a concern (this question has been raised in other documents to DCMS)?
- 10.39** The lottery sector is increasingly innovative and constantly introducing new and varied concepts in lotteries, some of which may have developed as a way of circumventing legislative restrictions. However, it is important to recognise that some restrictions – whilst still able to be circumvented in some form – will ultimately result in the overall aim of limiting impact.

#### **Limiting the number of individual society lotteries participating in an umbrella lottery**

- 10.40** Introducing a cap on the number of societies participating in an umbrella lottery scheme would not necessarily impact on the scale and scope of all current umbrella schemes, although it may prevent new schemes similar to those in existence from being launched in the future. Schemes such as the Health Lottery and Postcode Lottery may not necessarily be impacted unless the number of individual societies was capped at a low level. Large umbrella schemes require considerable financial resources from the outset, with most ELM-run schemes not actually seeing a commercial return for the ELM for a number of years.
- 10.41** Other schemes are designed for large numbers of small local societies to participate, so to limit the number of individual societies would effectively cut off a relatively risk-free lottery scheme from being available to local good causes. ELMs could offer a number of schemes, introducing a new one each time the numbers limit is reached. This would therefore transfer the issue of multiple societies being set up in order to run lotteries within the annual proceeds limit, from the societies to ELMs.

To limit societies could effectively lead to the creation of a family of umbrella brands, each having a maximum number of societies participating but essentially being the same schemes, with the same prize levels but with a slightly different focus on good causes based on the societies involved. The size of the prize to such schemes is largely irrelevant as the focus for most is very much on increasing the value of the local support that is already in existence within the society's community.

### **Introducing different 'large society lottery' limits on the participating societies**

- 10.42** The guiding principle behind the review of the regulatory regime for lotteries is that the purpose of society lotteries is to raise money for good causes. The regime governing them should be light-touch and encourage the maximum return for good causes. Any cap or limit introduced to 'large society lotteries'<sup>14</sup> that participate in an umbrella scheme needs to ensure that they are not counter-productive – that they do not unintentionally result in the amount raised for good causes being reduced, not increased.
- 10.43** Whilst the percentage returned to good causes for lotteries managed by ELMs may sometimes be lower than for lotteries run by societies themselves, the actual amount returned is also far higher. 58% of proceeds (£412.94million) in October 2013-September 2014 were raised by ELMs, accounting for £240.39 million, compared with 20% of proceeds (£178.66million) in 2008-2009, which accounted for £36.05million<sup>15</sup>. Economies of scale, access to marketing tools and shouldering the burden of risk (with regards to the cost of expenses and prizes) are all valid reasons for societies joining a scheme. The Commission has seen societies participating in umbrella schemes in order to 'grow' their supporter base to a point where they are able to take control of their lottery and promote it alone. This safeguards the societies from breaching the 20% return to good causes threshold. It should be noted that any changes to this threshold currently under consideration could impact on this proposal – or even negate the need for this completely.
- 10.44** Restricting prizes, applying umbrella licence requirements and increasing regulatory reporting requirements, whilst limiting the proliferation and penetration of umbrella schemes in the lottery market, may result in unintended consequences by restricting the amount raised for good causes through the promotion of lotteries. Whilst undoubtedly the larger branded schemes do offer higher prize levels and can utilise generous marketing budgets to promote the brand, there are hundreds of other societies who participate in branded schemes to a lower level for whom an increase in regulation of umbrella schemes may stifle the desire to increase income through lottery activities. As societies often use umbrella schemes to build up their supporter base before launching their own lotteries, they may be discouraged from doing so by changes in regulation that are intended to assist them in maximising returns to good causes. It would be extremely difficult, resulting in a complex regulatory framework, to enforce restrictions to 'large licensed lotteries'<sup>16</sup> within an umbrella scheme whilst also permitting small lotteries and 'small licensed lotteries', without placing an overall restriction which would impact severely on existing societies who already participate. In addition, looking at the individual lottery proceeds for a number of those within umbrella schemes, some are (by society) at a significantly lower level than many other lotteries – whether participating in a branded scheme or not – and would individually unlikely to all be caught in a general proceeds cap on larger lotteries.

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<sup>14</sup> Large society lotteries are those lotteries promoted under a society lottery operating licence issued by the Gambling Commission. A large lottery is regarded as such if it exceeds proceeds of £20,000, or the aggregated amount of all lotteries conducted by the society in a calendar year exceeds £250,000; or the society has in the previous three years promoted lotteries that have exceeded these limits.

<sup>15</sup> Industry Statistics April 2008 to September 2014.

<sup>16</sup> Previous documents submitted to DCMS have already outlined that if desired, DCMS could define a marked difference between larger lotteries operated under a Gambling Commission licence, and smaller lotteries also operated under such licence. This would be in contrast to the 'small' and 'large' lottery definitions outlined in the Act.

- 10.45** If changes to the annual proceeds are introduced, this may negate the need to introduce some or all of the proposals here, for example if the individual proceeds limit and individual maximum prize limit were to be kept at a similar level to those currently in place this would effectively restrict the expansion of the individual lotteries operated within an umbrella scheme – which may be regarded as a risk to the National Lottery – without causing unintended harm to the smaller participating societies. Other changes proposed by the Select Committee may address the concerns regarding umbrella lotteries in a different manner, meaning additional regulation of these types of schemes to be unnecessary.
- 10.46** The Commission recommends a full consultation before any changes regarding these proposals are progressed further.

### **Conclusions and recommendations**

- 10.47** The Commission recommends a full consultation before any changes to legislation are progressed.
- 10.48** Changes to legislation as a result of other recommendations made by the Select Committee may dilute or even negate the need to introduce new regulations for umbrella or branded schemes as other means of achieving the same result may become possible. Monitoring of these changes over a period of time before commencing a review of umbrella schemes could be preferable to introducing further legislative restrictions without the evidence to suggest that other less burdensome changes would be more effective.
- 10.49** Any changes that are made are likely to involve complex changes to regulatory framework, including changes to primary legislation and/or the introduction of a new fees category. The impact may include a greater regulatory burden on ELMs who offer branded schemes and societies who participate in them.
- 10.50** There is a risk of unintended consequences of additional legislation to cap ELM/umbrella lotteries in that the industry may see an increase in the number of smaller ELMs or schemes in an attempt to avoid any cap or lottery duty being imposed. There may also be consequences in that smaller societies may be disproportionately regulated compared to the income they receive from umbrella scheme lotteries.
- 10.51** DCMS may wish to consider whether applying additional licence conditions to society lottery operators rather than changes to primary legislation – eg limiting the amount raised overall in umbrella schemes to that of – or double that of – aggregated SL annual proceeds – could achieve some of these aims. The Commission would then need to consider how to monitor this, and when to review/what triggers would be set for review.
- 10.52** Section 18(2) of the Act allows the Commission flexibility in terms of the scope of operating licences. A licence may authorise promotion generally, or specific promotion activities as well as authorising promotion only in connection with lotteries of certain types or in certain circumstances. While this does provide considerable flexibility the Commission has historically been reluctant, and would not recommend, to issue licences with such restrictions as it does not authorise or approve lottery schemes, instead assessing an operators overall capability to comply with the licence conditions. To do so would also encroach on an operators freedom to raise funds for good causes in a manner both compliant and in keeping with the overall society values.
- 10.53** DCMS may wish to also consider whether they wish to consult further on amending the legislation at Section 99(4) to limit how much a single person can win in a single lottery regardless of how many ‘chances’ they have. There is nothing in the current legislation that prevents, for example, a person with two entries from winning the top prize twice (and receiving prizes which collectively exceed the maximum prize limits).

This would curtail some circumvention of the legislation in technically being able to award an individual a prize in excess of the current limits by allowing a person to win twice (for example with double prizes, second chances or additional draws).

- 10.54** Questions have been raised previously regarding the transparency of umbrella schemes, in terms of the prominence of the societies involved as well as the division of proceeds. The advice previously published separately by the Commission on umbrella schemes and ELMs promoting lotteries (both emphasising the importance of transparency in terms of 'reasonable' expenses, the societies participating in the schemes as well as good cause funds) could form part of a set of wider lottery licence conditions to require all societies and ELMs to be transparent to the Commission and consumers on their activities. Such amendment to licence conditions would not require changes to primary or secondary legislation, but would require the Commission to consult with the sector prior to any amendments taking effect.
- 10.55** When addressing the proposal of applying monetary proceeds and prize caps to schemes or operators there will inevitably be loopholes that will eventually be capitalised on. No legislative change is going to entirely remove the opportunity for exploitation without also removing the opportunity for growth and for societies to raise more money for good causes. When evaluating the different options, it is important to recognise that one change can have a negative or positive effect in achieving a different aim. For example, caps on the size of schemes could result in an existing ELM changing to operating two schemes per week in order to circumvent the legislation. By having multiple schemes, or multiple companies offering schemes, the operator will dilute the number of participants, which conversely impacts upon the size of the top prizes offered - the player base is divided between smaller schemes. The positive effect is that the size (and therefore impact) of a single scheme is reduced. Negatively, the ELM attracts the same number of players in total but larger prizes are unable to be offered so the prize element as a commercial 'hook' becomes less appealing. However, whilst DCMS achieves its initial aim of reducing the size of individual schemes, in consequence the lotteries are less appealing to players, reducing over time the number of total participants and thus the amount given to good causes.

## **11 Spreading the 20% admin requirements over an extended period, for example one year or three years**

### **Summary**

- 11.1** This section explores the request from DCMS to explore the impact of the proposal to allow newly created society lotteries to spread the 20% minimum return to good causes across a year in large lotteries and over three years in smaller lotteries. In particular DCMS have asked about the potential impact of the proposal on local authorities and whether it would increase the regulatory burden.
- 11.2** The Commission appreciates that the proposal may allow some society lottery operators greater flexibility to start new lotteries and develop new lottery products but would note to DCMS the risk that it also poses in terms of potential exploitation and also potential additional regulatory cost and burden to mitigate such additional risk.
- 11.3** The Commission is not aware that the current requirement on society lotteries to return 20% from each lottery from the first lottery onwards has deterred charities or other non-commercial organisations from entering the society lottery market or developing new lottery products. This also leads us to the view that there is not a problem which is worth bringing additional risk to solve.

### **Detail**

- 11.4** This section explains:
- current regulatory framework
  - benefits and risks of change
  - changes that would be required
  - full recommendations.

### **The current regulatory framework**

- 11.5** The Act defines a small society lottery at schedule 11 as one where the proceeds are less than £20,000 in a single lottery or £250,000 in cumulative lotteries in a calendar year. Small society lotteries are required to be registered with a local authority. Large society lotteries are those with proceeds above those limits and they are required to be licensed with the Commission.
- 11.6** The Act specifies at section 99, the mandatory conditions of a lottery operating licence, that at least 20% of the proceeds of any (large) lottery promoted in reliance on the licence are applied to the purposes of the promoting society and in the case of a lottery operating licence issued to a local authority to a purpose for which the local authority has a power to incur expenditure. In the case of 'small' society lotteries registered by local authorities, schedule 11, part 4 section 33 requires that the arrangements must ensure that at least 20% of the proceeds of the lottery are applied to a purpose for which the society is conducted. The Lotteries Council and others in the society lottery sector have argued that requiring new society lotteries or existing societies offering new products to return 20% of the proceeds from the start prevents and inhibits many new lotteries and therefore reduces good cause fundraising.
- 11.7** In the Commission's view the intention of the requirement to apply at least 20% of the proceeds of each lottery to the purposes of the promoting society is to maintain the fundamental principle set out in the Act for society and local authorities that they are only permitted as a mechanism to enable fundraising for purposes other than that of private or commercial gain.

- 11.8** A licence condition attached to all lottery operating licences requires each licensed society lottery operator to make a submission to the Commission within three months of the date of each lottery showing the total proceeds of each lottery and how they have been distributed between expenses, prizes and the amount returned to the purposes of the promoting society. In respect of small society lotteries registered with a local authority, schedule 11, part 4, section 39 requires the same information to be submitted by small society lotteries to the registering local authority within three months of the lottery draw.
- 11.9** The purpose of the requirement to provide a submission to the regulating authority (Commission or Local Authority) is to monitor compliance with the monetary limits and in particular the 20% return to the purposes of the promoting society.
- 11.10** During the past year there have been no breaches of the 20% minimum return requirement by society lotteries licensed by the Commission, including those newly licensed society lotteries.
- 11.11** In the Commission's view the arrangements for any society lottery must ensure that the level of expenses and prizes allocated from the proceeds must not be such as to reduce the returns to the purposes of the society to below 20%. In circumstances where the proceeds are insufficient to pay the total expenses and the cost of providing prizes in the lottery, the society must still ensure that 20% of the proceeds are applied to its purposes. In such cases the society may have to pay the expenses of the lottery and/or the cost of prizes from other sources of income or financial reserves.
- 11.12** The Commission has already issued advice that there is already considerable flexibility to spread the expenses of a lottery, particularly start-up costs and this therefore makes it easier for a new lottery to meet the 20% requirement from the beginning. This can be achieved by:
- apportioning the expenses of a lottery and recording how the proceeds collected have been used to pay expenses. It is reasonable for some of the start-up costs from the proceeds attributable to the lottery as a whole, rather than those related to a specific lottery, to be spread over a number of lotteries. Those expenses may include marketing and advertising and the initial administration costs of recruiting members to a new lottery
  - using income from sources other than lottery proceeds to fund start-up costs or other lottery costs and for that money to be repaid out of the expenses of the lottery over a period of time.

### **Potential benefits to society lotteries**

- 11.13** The proposal may benefit some new societies, where other sources of income are not available, by making it possible to have high expenses and higher prizes at start up while the lottery establishes itself or enabling existing societies to develop new lottery products.
- 11.14** When a new society lottery starts there are often additional expenses such as infrastructure, marketing, printing and advertising costs. Many society lotteries particularly local charities such as hospices and air ambulance charities commonly refer to participants in their lotteries as 'members' and they participate in lotteries on a subscription basis, such as an annual subscription. Once a sufficient core membership has been recruited which is sufficient to pay expenses, prizes and the return to the purposes of the society recruitment, marketing and some other costs can reduce. In other cases a group of societies will join together to form a brand lottery scheme or a group of charities will form a partnership and operate under a single society lottery licence and thereby reduce operating costs.

**11.15** Currently some societies pay the initial start-up costs and costs of starting new lottery products by spreading those initial costs over all lotteries conducted in the first six to twelve months. Some societies are also able to draw on non-lottery financial reserves or agree investment or a loan with an ELM, bank or other lender to pay for the start-up costs and this is then repaid over a period of time through the proceeds of the lottery. The relaxation to spread the 20% requirement would make it easier for societies without the ability to spread costs and those without financial reserves or someone to lend or invest funds to set up a lottery.

### **Potential regulatory issues**

**11.16** Allowing society lotteries to spread the minimum 20% return for lotteries over one or three years would make it more difficult to monitor and ensure compliance with the minimum return requirement and therefore undermine the principle that society lotteries can only be promoted for purposes other than private or commercial gain. Respondents to our recent survey of local authorities were strongly against the suggestion to spread the 20% requirement over a three year period, with 80% of those answering the question objecting to such a change (further details below).

### **Failure to achieve minimum 20% return**

**11.17** It is possible that at the end of a year, or three years, a society lottery will not have returned a minimum of 20% and may simply surrender their licence or registration.

**11.18** Allowing societies to spread the costs over one or three years may result in all or a significant proportion of the proceeds collected being spent on prizes and expenses, and effectively creating a commercial lottery. Some of those involved in making the arrangements for the lottery may have a different motivation, ie commercial gain rather than the aims and objectives of the promoting society. Expenses in society lotteries include salaries and costs of the paid administrators of the lottery, payments to External Lottery Managers (ELMs) and to service providers such as advertising and marketing companies, website providers, payment processors, professional fundraising companies and ticket printers.

**11.19** The relaxation of the 20% requirement could also lead to speculative licence applications and lotteries where the prime motivation is to provide a source of income for the administrators and service providers. Where a new lottery fails to establish itself and return 20% to its aims and objectives the organisers could simply stop the lottery and surrender their licence or registration prior to the first or third year and the Commission or Local Authority would have limited powers to take retrospective action. In response to our survey some local authorities said they worried the relaxation of the requirement would leave the system open to abuse, others commented:

*“It may also allow people to operate at a lower percentage and then stop doing it, how would this be dealt with retrospectively?”*

### **Assessing and monitoring compliance with the 20% requirement**

**11.20** Currently at the time of an application for a lottery licence or registration a society will submit details of the proposed lottery scheme and projections of ticket sales and prizes and how they will operate within the monetary limits including the 20% requirement. The Commission and local authorities assess applications and decide whether the applicant is eligible for a licence and whether the society is likely to be compliant with the Act and licence conditions.

The Commission and local authorities do not have the expertise or responsibility to assess whether or not a particular lottery scheme will be viable and whether they will achieve the ticket sales required to pay prizes, expenses and return a minimum of 20% to their purposes<sup>17</sup>. If applicant societies were required to carry out and provide market research, and detailed professional business plans including ticket sales projections this could deter some smaller societies from applying for a licence or registration because of the cost. Once a lottery starts changes to expense and prize levels are not specifically monitored by the Commission or local authorities as this would require constant detailed scrutiny of the prizes and expenses of each lottery. Rather it is the responsibility of each society to ensure they operate within the monetary limits and submit details of how the proceeds have been distributed after each draw in their submissions.

- 11.21** Allowing societies to spread the costs would require additional resources at the Commission and local authorities to carry out analysis of the viability of each lottery scheme prior to its introduction and on-going detailed monitoring of the performance of each lottery. This could result in increased cost and an increase to the Commission's operating licence fees would need to be considered. As LA fees are set by legislation, this may mean that they simply will not have the financial resource to carry out this process. This would also increase the regulatory burden on lottery operators who would be required to submit more detailed information. In response to our survey of local authorities 74% said that this would place an unnecessary increase of the burden on LAs (or indeed on the society lotteries themselves), particularly at a time when budgets and resources are being cut and full cost recovery was not possible in this area:

*"This would be difficult to monitor and overly complex for applicants to easily understand" and*

*"As lotteries are issued on an annual basis it would be quite complex to monitor the values over an accumulated three year period. What would be the effect if a short term lottery was only operational for one year? Does the proposal intend that lottery registrations will be valid for three years?"*

- 11.22** It would be more costly, complex and burdensome for the Commission and local authorities to design and operate a new regulatory regime to effectively monitor proceeds distribution in each lottery. Such a regime would require specialist analytical skills and would require detailed monitoring of proceeds after each lottery to ensure the scheme was on course to return 20%. It would also increase the regulatory burden on the lottery sector and potentially licence and registration fees would need to be increased to pay for the additional monitoring.

### **Changes that would be required to the legislation and licence conditions**

- 11.23** If it is decided to implement the proposals changes would be required to the Act. Alongside changes to the Act complex changes to the regulatory framework would be needed to ensure and monitor compliance. Those changes would include:
- Changes to primary legislation at section 99 (mandatory licence conditions) to allow societies licensed by the Commission to be spread the 20% return over one year.
  - Changes to schedule 11 to part 4 to allow society lotteries registered with local authorities to spread the 20% return over three years.
  - Changes to the 'filing of records' requirement for small society lotteries in schedule 11 to require more detailed information about each lottery to be submitted on a monthly basis.

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<sup>17</sup> The context is rather in terms of ability to absorb or support financial liabilities (e.g. what contingency is in place if a lottery isn't successful and has high expenses or prizes? Is there sufficient money available to protect the 20% and pay prizes?)

- The *Licence conditions and codes of practice* (LCCP) would require amendments to reflect the changes in the Act. Including changes to the licence condition relating to the submission of lottery returns.
- Changes to the licensing and registration process to allow for more detailed scrutiny of applications to assess the viability of each lottery scheme.
- Increase in fees for society lottery licence holders and those holding local authority registrations to reflect the cost of additional resources required to oversee the new regulatory regime.

## **Recommendations**

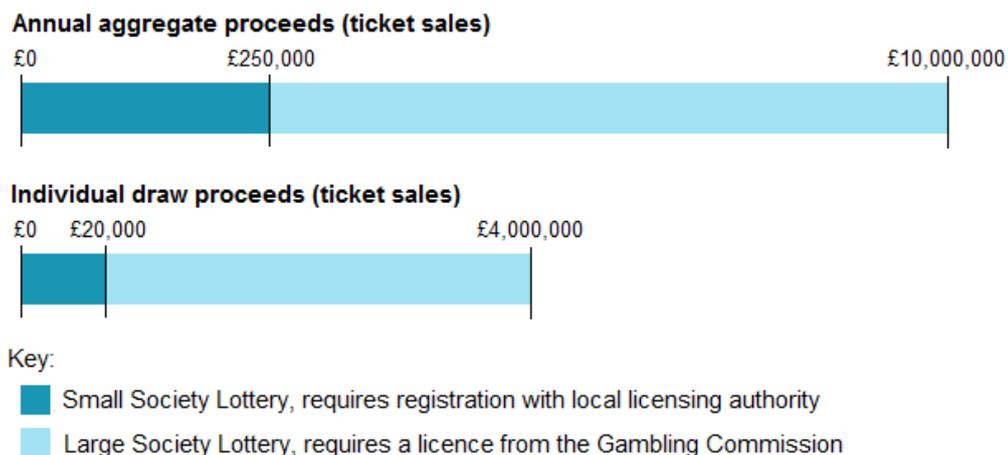
- 11.24** It is the view of the Commission that the proposal may allow some society lottery operators greater flexibility to start new lotteries and develop new lottery products but the potential compliance risks, particularly in terms of commercial operators exploiting the relaxation for short term gain and the additional regulatory burdens on lottery operators, the Commission and local authorities in developing and administering a complex regime to ensure compliance would negate the potential benefits to the sector.
- 11.25** The Commission is not aware that the current requirement on society lotteries to return 20% from each lottery from the first lottery onwards has deterred charities or other non-commercial organisations from entering the society lottery market or developing new lottery products. Most society lottery operators either use financial reserves or other funds obtained through loans to start their lottery, which they repay through the expenses of each lottery over a period of time, or they utilise the flexibility that already exists to enable society lotteries to spread certain start-up costs of new lotteries over a number lotteries promoted in the first year or so.

## Appendix 1: Society Lottery definitions, including multiple licence restrictions

**A1.1** In GB, society lotteries can only be run by non-commercial entities. Section 19 of the Act states that a society is non-commercial if it is established and conducted:

- For charitable purposes.
- For the purpose of enabling participation in, or of supporting, sport, athletics or a cultural activity.
- For any other non-commercial purpose other than that of private gain.

**A1.2** Those entities are called societies within gambling legislation and require either a registration from a local licensing authority (small society lottery) or a licence from the Commission (large society lottery) dependent upon proceeds. As follows:



**A1.3** Schedule 11, part 4 of the Act sets out those thresholds and states that a society lottery is a large lottery if the arrangements for the lottery are such that total proceeds (ticket sales) from it:

- in a single society lottery exceed £20,000, or
- the proceeds in cumulative lotteries promoted in the same calendar year have aggregate proceeds in excess of £250,000.

**A1.4** This and other parts of the Act mean that a single society cannot hold multiple permissions, other relevant sections include:

- Section 258 states that a person commits an offence of promoting a large society lottery unless they hold a lottery operating licence issued by the Commission or the lottery is an 'exempt lottery', which includes 'small society lotteries'.
- Schedule 11, parts 4 and 5 set out the requirements for small society lotteries including the requirements for a registration with a local authority.
- Schedule 11, part 4 (5) states that if a society promotes a lottery, which is a large society lottery, then every subsequent lottery it promotes in that year and in the following three years will also be a large lottery and will require the society to hold a lottery operating licence issued by the Commission.

## Appendix 2: Gambling Act and 20% requirement

- A2.1** The Act specifies at section 99, the mandatory conditions of a lottery operating licence, that at least 20% of the proceeds of any lottery promoted in reliance on the licence are applied to the purposes of the promoting society and in the case of a lottery operating licence issued to a local authority to a purpose for which the local authority has a power to incur expenditure.
- A2.2** Section 99 also specifies that the proceeds of a lottery promoted in reliance on a licence may not exceed £4 million and £10 million in cumulative lotteries promoted wholly or partly in a calendar year. It also limits the maximum prize to £25,000 or 10% of proceeds.
- A2.3** Provided that a minimum of 20% of the proceeds goes to the purpose of the promoting society the Act does not set any limit on the percentage of the remaining proceeds that may be used for expense and prizes, including rollover prizes. The Act (section 254) defines expenses as 'costs reasonably incurred in organising the lottery'.
- A2.4** The previous legislation, the 1976 Lotteries and Amusements Act set limits on the percentage of proceeds that could be used to pay prizes and expenses in each lottery. The 1976 Act specified that the maximum amount that could be used for expenses and prizes could not exceed 80%, thereby ensuring that at least 20% of the proceeds went to the purposes of the promoting society. The Act also limited prizes to a maximum 55% of proceeds and limited expenses in a lottery where the proceeds did not exceed £20,000 to 35%. If the proceeds exceeded £20,000 expenses were limited to 15% unless prior authorisation was granted by the Gaming Board to exceed that amount, up to a maximum of 35%. Societies requiring authorisation for increased expenses from the Gaming Board were required to submit a detailed breakdown of the expenses which they expected to incur organising the lottery. The promoter of the lottery was required to demonstrate that the expenditure was necessary and realistic and they did not derive from excessive payments to External Lottery Managers or other payments to third party service providers.

## Appendix 3: Overview of types of operators currently utilising umbrella schemes

- A3.1** The statutory role of the Gambling Commission – as set out in the Gambling Act 2005 – is to permit gambling insofar as reasonably consistent with the licensing objectives of keeping crime out of gambling, ensuring it is fair and open and protecting children and vulnerable people. The Commission does not pre-approve particular schemes (although its licensing processes are a rigorous test of suitability) but it will work with operators to ensure compliance with the Act.
- A3.2** Whilst most umbrella schemes are managed and run by ELMs, there is no legal framework and no mandatory requirements for this – umbrella schemes can be organised in a variety of ways:
- societies can group together to run their lotteries under a single brand, with a single society overseeing the consolidated administration of the brand itself but each individual society responsible for the promotion of their own lottery and collection of proceeds. Such schemes will often occur when a neighbouring society with similar aims seeks to join with an established lottery – hospices for example often have a shared geographical area, with similar aims and objectives.
  - societies can have arrangements in place to join together to operate a single branded lottery scheme for societies with common purposes, to take advantage of shared marketing and administration costs. Hospices and air ambulance charities are examples whereby the common cause in a defined geographical area can enable a group of small charities to share the costs of operating multiple lotteries under a single scheme brand, and this is particularly popular where such organisations already enjoy shared services in carrying out their charitable objectives.
  - societies can employ an External Lottery Manager (ELM) to manage their lotteries through an umbrella scheme. Most schemes are managed by ELMs because – as commercial organisations – they are able to utilise funds and funding arrangements not always available to societies, for example to aid set-up. Whilst Postcode Lottery and Health Lottery are high profile umbrella/branded lottery schemes there are many others that operate at a lower level but still return significant amounts to good causes.
- A3.3** Whilst all of the above schemes are very different, they do all take advantage of volume sales in order to reduce the operating expenses per society and therefore offer higher prizes than if the societies ran the lotteries themselves. The ELM takes the risk with regards to the winner being a participant in a smaller organisation's lottery, and will pay out the prize from either their own funds or from an insurance policy. The society enjoys the benefits of a large marketing scheme that they could not otherwise afford; increased security of player data; and the support of an ELM in assisting with compliance. These schemes typically return between 20% and 50% of proceeds. As none of the smaller schemes offer a prize above £25,000, the regulations relating to large prizes not exceeding 10% of the lottery proceeds (regardless of whether the prize is donated or not) do not apply here.<sup>18</sup>
- A3.4** All of the above schemes are subscription lotteries. Some only promote lotteries on behalf of licensed societies (large lotteries), others will promote lotteries on behalf of both licensed and registered (small) societies<sup>19</sup>.

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<sup>18</sup> Societies licensed by the Commission are limited by Section 99(4) of the Act to offering a single prize of no more than £25,000 or 10% of the proceeds of the individual draw (permitting a maximum prize of £400,000)

<sup>19</sup> Registered societies are small societies running lotteries under a local authority registration. They are restricted to individual lottery proceeds of £20,000, and aggregate annual proceeds of £250,000. Prizes are capped at £25,000

**A3.5** It should be noted that the Act does not require an ELM to be licensed if it only promotes lotteries on behalf of small societies<sup>20</sup>. Whilst the Commission's position has been maintained that an ELM should hold a lottery manager's operating licence, the legislation does not make this particularly clear. Government may wish to address this inconsistency when reviewing the role of ELMs.

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<sup>20</sup> Sections 258 and 259 of the Act relate to the offences of promoting and facilitating a lottery – neither section applies in the case of an exempt lottery - which a small society lottery (within Part 4 of Schedule 11) is.

## Appendix 4: Background to the Health Lottery

- A4.1** Umbrella schemes have been operated by ELMs since the amendments to the previous legislation, with varying degrees of success. The application for a lottery manager operating licence by Health Lottery ELM Limited raised the profile of umbrella lotteries due to the size of the proposed scheme and the scope for marketing the scheme on a national scale, even though other ELMs were already operating schemes of significant size. The Health Lottery raised fears in parts of the third sector (alongside Camelot) that it could both detract lottery spend from other society lotteries and also detract spend from the National Lottery.
- A4.2** Whilst the application of such schemes does not affect the licensing objectives, they may flout the intentions of the Act. If the government wishes to preserve the lottery proceeds limits and/or avoid the unintended consequences outlined above it may need to impose mandatory conditions or take other action to reinforce the proceeds limits and reduce the risk that these lotteries establish a successful precedent for avoiding the proceeds limits.
- A4.3** In 2012 Camelot launched a legal challenge by way of Judicial Review to the legality of the scheme, arguing that it was not a series of individual society lotteries but in fact was a single large lottery – and thus breached the limits imposed on societies on the amount of proceeds permitted in a single calendar year. The Gambling Commission defended its decision to grant the operating licences to the ELM and the 51 societies who comprised the scheme, arguing that the societies were distinctly separate in their geographical make-up and therefore under the requirements of the Gambling Act, regarded as individual societies. The prominence of the society above that of the brand in the marketing would be key to establishing this, and the Commission issued guidance in 2011 on [promoting multiple society lotteries under a branded scheme](#).

## **Appendix 5: Previous research and recommendations from NERA**

- A5.1** Umbrella schemes amount to a sizeable chunk of the society lotteries market, accounting for over 40% of the total proceeds raised during 2013/14, although this figure fell slightly to around 37% during 2014/15. In addition, this group returns an important revenue stream to good causes.
- A5.2** Umbrella schemes remain relatively small and differentiated by comparison with TNL. Lower jackpots, coupled with a single-cause association constitute an important difference in the player experience. Two studies on competition between TNL and society lotteries followed the introduction of THL in 2011. Neither found that the entry of THL had large effects on the Lotto sales, with the maximum estimate of impact at 2.8% weekly sales at THL's height of popularity.
- A5.3** Previously research has focused on comparisons between TNL and THL, so no comparison has been made with other branded schemes.
- A5.4** As the scope of other umbrella schemes is somewhat different, comparisons with the National Lottery are more difficult. Most are subscription only lotteries and not available through retailers. Membership of the scheme may be through post, telephone or online. Therefore, the availability to the average consumer is more limited. However, as subscription only schemes, they may not be affected by external factors such as the National Lottery rollovers influencing consumer choices.

## Appendix 6: Overview of Commission requirements – marketing and branding of umbrella schemes

- A6.1** Whilst the interpretation of the Act is ultimately a matter for the courts, the Commission issued advice and guidance in 2011 to operators on how to ensure lotteries promoted as part of branded or umbrella schemes are conducted in a compliant manner. This advice sets out some of the indicators to which the Commission has regard in determining whether a particular scheme is being properly promoted as a series of separate lotteries or is in reality a single lottery. These indicators may also be relevant, in appropriate cases, to the Commission's decision whether to grant an operating licence.
- A6.2** The focus of the advice is that where an ELM, society or a collection of societies promote a number of lotteries under a single brand, each lottery must be organised and promoted in such a way as to ensure that the lotteries are not combined to form one single lottery, which could be a breach of the requirements of the Act for proceeds<sup>21</sup>. The relevant monetary limits set out in the Act apply to each of the individual society lotteries separately and so cannot be combined in order to offer a prize over the statutory limits.
- A6.3** The Commission also sets general principles with regards to the branding of a scheme, whereby the prominence of this cannot overshadow the branding of the society. The advice outlines the requirements of the Act in that each individual society lottery that forms part of a single branded scheme must be promoted separately, and it must be clear to participants which society lottery they are being asked to participate in. Where a number of society lotteries are promoted under one brand, whether with an ELM or not, the Commission may refer to the following indicators to assist in evaluating whether the scheme is being promoted as a single large lottery or a series of individual lotteries:
- The extent to which the general advertising and marketing material relating to the promotion of the umbrella lottery brand makes it clear each lottery draw will be on behalf of separate identified societies.
  - Prior to each lottery draw the relative prominence of the name of the umbrella lottery brand in the advertising and marketing material compared to that of the name of the society or societies involved in the promotion of that particular draw.
  - The extent to which the document (ticket) given to participants at the time they pay to enter the lottery clearly and prominently specifies and displays the name of the individual society or societies involved in promoting each lottery draw that the participant has entered.
- A6.4** The advice further explains how the proceeds from one society's lottery may not be used to fund any of the prizes or expenses in a different society's lottery promoted under the same brand. For example proceeds from lottery A promoted by society A may not be rolled over to fund prizes in lottery B promoted by society B (a different society) or be used to pay or subsidise any prizes in society lottery B. This should be made clear to players in any marketing and advertising material used. This then prevents the scheme from offering large rollovers up to the maximum £400,000 limit in order to capture new players, or from running two separate lotteries using a single draw and combining the proceeds in order to offer a single large prize. The restrictions on combining prizes/expenses and ensuring the advertising material is clear to players together effectively prevent an umbrella scheme from marketing a single large lottery with large prizes. The additional restriction preventing the donation of a prize valued above the statutory limits also acts as a further safeguard.
- A6.5** It should be noted that the Commission intends to review this advice once the consultation on society lotteries is concluded, taking into account any changes to regulation and also accounting for changes within the lottery sector itself, particularly with regards to technological advancements such as lottery entry via text message, and the growth of the mobile platform.

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<sup>21</sup> As set out in section 99(3) with regards to lottery proceeds, and the limits on prizes – enforced by section 99(4)

## Appendix 7: Background of the current regulatory framework

- A7.1** The concept of ELMs first arose at the time of the National Lottery etc Act 1993, which amended the Lotteries and Amusements Act 1976 Act by providing for a class of persons, licensed by the Gaming Board, who were entitled to manage society lotteries and local authority lotteries. Under that regime, the maximum figure of expenses that could be deducted from the proceeds of the lottery was capped at 35 per cent for lotteries with proceeds of £20,000 or under and 15 per cent in all other cases. The balance of the proceeds fell to be divided between sums used for prizes and sums to the society in question for its purposes.
- A7.2** Under the Gambling Act 2005, the caps on expenses and prizes was relaxed, instead a single minimum percentage being applied to the 'good cause' element (20 per cent), by virtue of the mandatory conditions attached to lottery operating licences under section 99 of the Act. It follows that the balance of the proceeds are divided up between expenses and prizes, permitting a society and ELM to agree service fees, on terms which those two parties decide. The Act did not appear to anticipate that there may be circumstances, such as with the Health Lottery and Postcode Lottery, where an ELM assists in establishing the societies and the promotion of lotteries as the sole means of income for those societies, thus providing the ELM with a non-commercial market but for commercial gain.
- A7.3** Whilst the new arrangements for expenses introduced in the 2005 Act were intended to enable societies to benefit from the economies of scale that use of an ELM can provide, there is no restriction in the regulations to an ELM developing a marketing brand which all can use to promote their individual schemes i.e. an umbrella scheme. The unintended consequence of this could be regarded as introducing a systematic economic bias in favour of large ELMs with access to major marketing resources and an incentive to create societies under this brand which minimise the administration costs. In the worst case scenario it could encourage more ELMs to enter the market with created societies designed to capitalise on this area of the sector for the return from proceeds they are allowed to take. It should be noted however that the Commission has not seen any evidence of this since the Health Lottery was launched in 2011. Whilst the reasons for this are unknown, the expense of setting up a large branded scheme excludes a majority of individuals and companies from exploring this. For a scheme to be successful from the start requires incredible investment in technology, experienced personnel, payment mechanisms, branding and marketing campaigns – as well as an ongoing commitment to financing the marketing of the scheme post-launch to prevent attrition.

Published June 2018

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