

Changes to society lottery and external lottery manager operating licence requirements

Consultation responses

December 2017

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1 Introduction

- 1.1 On 20 July 2017, the Gambling Commission published a consultation setting out proposed amendments to the *Licence conditions and codes of practice* (LCCP) that apply to gambling operators licensed by the Gambling Commission.
- 1.2 The amendments are being made to further ensure gambling is offered in a fair and open manner and reflect the commitment made in the Commission's Corporate Strategy to improve transparency to consumers across the whole gambling industry. They also take account of proposals from the Culture, Media and Sport (CMS) Select Committee's Inquiry into Society Lotteries in 2015.
- 1.3 Alongside the amendments referred to in this document we also intend to make a number of other revisions to LCCP in 2018, and will take the opportunity to make some minor corrections/clarifications to the headings in LCCP which set out the categories of licences to which each provision (or part of a provision) applies. These clarifications will not have a material effect.
- 1.4 This provides a summary of stakeholders' responses and our conclusions following the consultation. The amended provisions to the LCCP will come into effect on 4 April 2018.

2 Background

The Gambling Commission

- 2.1 We license and regulate all commercial gambling and large society lotteries within Great Britain, including the National Lottery, with the exception of spread betting which is regulated by the Financial Conduct Authority (FCA).
- 2.2 Our functions under the Act include:
 - licensing operators and individuals
 - monitoring compliance with licence conditions and the law
 - investigation and enforcement, both in relation to licensed operators and illegal (unlicensed) gambling
 - providing advice to central and local government on the incidence, manner, effects and regulation of gambling.
- 2.3 We have a statutory duty to aim to permit gambling provided that it is reasonably consistent with the licensing objectives. Our approach to the regulation of lotteries has been developed with that duty in mind.

Policy objectives

- 2.4 The requirement for gambling activities to be conducted in an open manner, with terms and conditions made transparent to participants, applies to all operating licensees. This includes operators who promote society and local authority lotteries, and those who act as external lottery managers (ELMs). The Commission considers that societies and ELMs could and should do more to provide consumers with more information on the lottery they are participating in, and how much of their stake is returned to support the aims and objectives of the promoting society. We consulted on two new social responsibility (SR) code provisions (4.3.1 and 4.3.2) to achieve this. These codes will now be implemented with some amendments to reflect the responses received through the consultation process.
- 2.5 We also consulted on updating and adding further definitions to the footnote of an existing SR code provision 3.2.13, to aid clarity for operators.

3 Summary of responses

3.1 A total of 27 responses to the consultation were received. Respondents identified themselves as follows:

- Industry body - 11
- Charity - 11
- Other - 3
- Local authority - 2

The numbers above include 16 operators who responded to the consultation. Some operators identified themselves as 'Industry body' and some as 'Charity'. For a full list of non-confidential respondents see **Annex A**.

3.2 The consultation provided four questions and specific areas for discussion, to which stakeholders were invited to respond.

3.3 We have revisited the proposed amendments and made revisions based on the feedback received from respondents. We have also made some additional changes to ensure clarity.

3.4 The details of the responses we received to the consultation questions, along with the Commission's position in view of those responses, are provided below.

Proposed new social responsibility code provision 4.3.1- Publication of percentage of lottery proceeds returned to the purposes of the society or local authority

Consultation proposal

3.5 To increase transparency for consumers, the **Commission proposed the addition of social responsibility code provision to require operators to display the proportion of lottery proceeds returned to the purposes of the society or local authority.**

Consultation question

Q1. Do you agree that SR Code 4.3.1 should be added to provide greater transparency on the use of lottery proceeds by societies and local authorities?

Respondents' views

3.6 All respondents agreed that SR code provision 4.3.1 should be added to provide greater transparency on the use of lottery proceeds.

3.7 However, a number of respondents sought further clarity. In particular, what we mean by calendar year, where this starts and when we expect the figure to be provided (four respondents), how the percentage should be calculated and displayed and what we constitute as expenses (six respondents). A concern was raised that without clear guidance there was a danger that figures could be manipulated or non-comparable. Three respondents also asked for clarification regarding whether they would need to display separate percentage figures where the lottery supports more than one beneficiary.

3.8 Several respondents felt that the code could go further. Four felt that licensees should be encouraged to accompany the percentage figure with a wider impact statement or further information on how much their lotteries raised for good causes, feeling that inclusion of the way they operate would further enhance transparency. And, similarly, six respondents suggested that in addition, or instead of the percentage, societies should display the monetary figure of the return to good causes.

Some raised the concern that a percentage figure alone can be ‘one dimensional’ and may not portray the level of income that is raised for the objectives set out by the charity. Four respondents felt that it should also be made apparent to consumers what percentage of lottery proceeds have been returned to players as prizes or retained to cover expenses.

- 3.9** Although agreeing that greater transparency is positive, five respondents raised concerns regarding how a relatively ‘low’ percentage may be perceived by consumers. This was raised in the context of entirely new societies or new lottery draws by existing societies, where in each case the initial costs of setup might result in a lower return to the good cause, whilst the society or draw becomes established.

Our position

- 3.10** Whilst we acknowledge the concerns raised that consumers might have a negative perception of lower returns to good causes, for example in the case of start-ups, we remain of the view that increased transparency is important. It is right to provide consumers with information to enable them to see how their money is spent and make decisions about where they spend it. Therefore, we will add the SR code. This will require operators to provide consumers with information about the proportion of lottery proceeds (tickets sales) returned to good causes or for local authority expenditure, in a calendar year.
- 3.11** We agree with the comments from some respondents that the return to the good cause is not the only information that would be helpful for consumers, but consider that, at this stage, it is proportionate to limit the regulatory requirement to reporting the overall percentage returned to the good cause (in the case of a society lottery) or purposes for which they have the power to incur expenditure (in the case of a local authority lottery). As we set out in the consultation document, this reflects requirements elsewhere in the charity sector, where information about the percentage returned to the good cause is expected to be made available.
- 3.12** Although the Code only requires the percentage to be displayed, operators are not limited to this. As long as the percentage remains clearly available, supporting information - such as that suggested by respondents – could be provided to supplement the message about the importance of the work carried out via their lottery or lotteries. Operators may also choose to provide further information regarding spend on prizes and expenses (from lottery sales), but this will be a matter for them.
- 3.13** To clarify, we are expecting operators to display, in a timely manner, the proportion of lottery ticket sales (as a percentage) for the previous calendar year, returned as profit to the good cause. Or, in the case of a local authority lottery, returned to purposes for which they have the power to incur expenditure. This does not need to be broken down by activity or beneficiary and is simply a percentage figure for the society lottery operator or local authority lottery operator (licensed entity) as a whole. For society lotteries this is: total profit (amount returned to good cause) in a calendar year, divided by total proceeds (ticket sales) in a calendar year, multiplied by 100 to provide a percentage figure.
- 3.14** The percentage must only take account of money related to the lottery proceeds (money collected from ticket sales), it must not include funds raised through other activities of the good cause, charity or local authority. Licensees already collect this information in order to monitor their activity in relation to the statutory limits and to comply with information requirements – we are therefore not asking for additional data to be collected by operators.
- 3.15** A calendar year should be taken to have its normal meaning, which is 1 January to 31 December. Operators should include in the total any lotteries that have concluded within that period.

- 3.16** Further information regarding proceeds, profits and expenses in relation to lotteries is provided in our [Lottery proceeds advice note](#), which is available on our website.
- 3.17** See **Annex B** for the final version of the code provisions, which will come into effect on 4 April 2018.

Proposed new social responsibility code provision 4.3.2- Marketing of all lotteries conducted under a single brand (umbrella lotteries)

Consultation proposal

- 3.18** The Commission proposed a new SR code provision related to the marketing of branded lottery schemes, requiring operators to make it clear to consumers which society lottery they were participating or being asked to participate in. The proposal was to base the Code on indicators already contained with the Commission's advice note 'Promoting multiple society lotteries'.

Consultation question

- Q2. Do you agree that SR Code 4.3.2 should be added to provide greater transparency to consumers on which societies are promoting their lotteries through a single brand?

Respondents' views

- 3.19** All respondents agreed that SR code provision 4.3.2 should be added to provide greater transparency on the use of lottery proceeds. However, a key theme of concern was raised regarding the proposed drafting of the Code. It was felt that the use of the term 'secondary' extended the scope of the original advice, which the code was intended to replicate. It was considered that as drafted, the code could essentially undermine the advantages of offering a branded scheme and make it so costly to operate, that it may make them impossible to offer. There was also a concern that the level of change prompted by requiring a secondary prominence of the brand, could cause greater confusion to the consumer. As such, four respondents suggested revisions to the wording of the Code.
- 3.20** In relation to the prominent and clear display of the promoting society on the lottery ticket, two respondents believed that this was already a statutory requirement and questioned its inclusion in the condition.
- 3.21** The terminology of 'general advertising and marketing material' and 'marketing materials prior to each draw' was regarded by some as ambiguous and confusing. Respondents said there is no clear distinction between what is considered for each term and the difference between them.
- 3.22** Two respondents were unclear as to whether this would apply to society lotteries with multiple beneficiaries and asked for guidance.

Our position

- 3.23** As set out in the consultation document, we intend to convert the key principles contained in our advice note related to promoting multiple society lotteries through branded or umbrellas schemes into an SR code to attach to all lottery operating licences. This will require operators to follow those principles, and ensure consumers are provided with sufficient information for them to make an informed choice as to whether they wish to support that good cause or not.

- 3.24** It is not our intention to extend the scope of those principles, or curtail any activity that is already operating lawfully within both those principles and the broader legislation. Equally, we do not wish to enforce a requirement that effectively removes the sector's ability to come together under a common brand and benefit from the economies of scale that they can offer. However, it remains important to ensure that the nature of these schemes is transparent to consumers. It must be clear to consumers that although there is a common brand, they are participating in individual society lotteries, and which lottery they are participating in. Therefore we have concluded that operators will be required to provide information about the promoting society clearly and relatively prominently in any marketing/advertising material.
- 3.25** However, having taken note of the feedback received we have restructured the wording of the code provision. We have amalgamated the three strands initially proposed into two separate requirements. Although this is now set out differently to the original advice, the code provision conveys the same principles, whilst addressing the concerns raised during the consultation regarding the scope of the code provision and duplication of requirements. See Annex B for the revised code provision, which will come into effect on 4 April 2018.
- 3.26** This code provision does not apply where a single society lottery has multiple beneficiaries. However, in that case you must still be clear that the lottery is that of the society and not the beneficiary.

Consultation question

- Q3. Do you have any other comments on the proposed new SR codes as drafted?

Respondents' views

- 3.27** We received 12 comments in response to this question. The majority requested increases to both the annual and single draw proceeds limits placed on society lotteries in section 99(3) of the Gambling Act 2005 ('the Act'), with some respondents suggesting that doing so could increase transparency, but not related directly to the proposals. One respondent also suggested that 20% minimum return to good causes set in section 99(2) of the Act is too low.
- 3.28** In relation to suggested SR Codes, three respondents questioned the role of the Gambling Commission in the disclosure of the return to good causes, with two feeling that this was more correctly a role for the Fundraising Regulator, the other asked for the underlying legal basis on which the proposal was made.
- 3.29** It was also asked whether the proposed transparency requirements for society and ELM lotteries around promoting lotteries under a single brand will also be a requirement of the National Lottery, which the respondent suggested raises money for a variety of good causes under a single brand without needing to give prominence to the societies' benefitting brands above its own.

Our position

- 3.30** As set out in the consultation document, these SR codes were proposed to ensure that operators provide a greater degree of transparency to consumers. This is an issue for the Commission, given our duty to ensure that gambling is offered in a fair and open manner as set out in one of the three licensing objectives provided by the Act. It is on this legal basis that the proposals were made.

We acknowledge that the Fundraising Regulator may also have an interest in matters of transparency. As in other areas, where appropriate, we will continue to work with our co-regulators to ensure consistency of approach.

- 3.31** The transparency requirements will not apply to the National Lottery operator, as they are not licensed under the same regulations. However, the amount returned to good causes by the National Lottery is published annually both on the Gambling Commission website and through their annual accounts. The requirement to publish their accounts is also a condition of their licence. The figure the National Lottery returns to good causes is also published in the Gambling Commission's Industry Statistics, alongside the overall figure the large society lottery sector returns.
- 3.32** We have noted the comments regarding the limits, which fall outside of the scope of this consultation

Proposed amendment to social responsibility code provision 3.2.13- Access to gambling by children and young persons – remote lottery SR code

Consultation proposal

- 3.33** We consulted on updating the definition of 'low frequency' lotteries already contained with the footnote of SR code 3.2.13 and adding further definitions of 'high frequency' and 'instant win' lotteries. The intention was to provide greater clarity for operators on when certain requirements might apply to the activities they undertake.

Consultation question

- Q4. Do you have any views on how we define instant win, low and high frequency lotteries, for the purpose of those codes where separate proportionate requirements are proposed?

Respondents' views

- 3.34** While the majority of respondents had no comment to make regarding the proposed definitions, seven felt that they were unclear and confusing. A number questioned what a lottery was classed as if it did not meet the definition set out for a 'low' or 'high' frequency lottery, as those proposed appeared to create a gap into which some could fall.

Our position

- 3.35** The definition for a low frequency lottery already existed in the Code, although we had proposed to change it slightly to incorporate local authority lotteries. We also proposed to add the definitions for both 'high frequency' and 'instant win' lotteries to the Code - these definitions had been set out in our recently revised RTS. Including them in the Code was proposed with the aim of providing greater clarity to help operators identify when a particular requirement of those standards would apply to their operations.
- 3.36** The definitions are not general definitions and only apply either for the purposes of the Code or individual specific requirements set out in the RTS. Therefore, the definitions are stand alone, operators need only determine if for those particular circumstances the lottery being held meets that definition and therefore the sorts of controls, policies or processes they will need to have in place. For example, for SR code 3.2.13, operators need only determine if the lotteries they offer are low frequency or not, as that is the only definition relevant to conclude which requirements must be followed, ie those set out at 3.2.13, 2, f, (i) or those at (ii).

3.37 As the addition of the definitions for ‘high frequency’ and ‘instant win’ lotteries does not achieve the further clarity we had hoped to achieve; and those definitions are already set out alongside the relevant requirements in the RTS, we are not carrying forward our proposal of including them in SR Code 3.2.13. We are updating the definition of ‘low frequency lottery’ to make it clear that it includes those lotteries offered by local authorities. See Annex B for the revised Code, which will come into effect on 4 April 2018.

Annex A: List of non-confidential respondents

Barnardo's
Battersea Dogs and Cats Home
British Red Cross Society
Camelot UK Lotteries Limited
Cancer Research UK
Charities Trust
Clare House
European Lotteries Association
Health Lottery ELM Limited
HealthStrength CIC (representing the 51 Health CICs of the Health Lottery)
Hospice Lotteries Association
Institute of Fundraising
Ladbrokes Coral Group PLC
National Trust (Enterprises) Limited
Newcastle upon Tyne City Council
PDSA Trading Limited
Postcode Lottery Limited
St Barnabas Hospices (Sussex) Limited
St Giles Hospice (Promotions) Limited
St Helens Metropolitan Borough Council
St Kentigern Promotions Limited
St Peter's Hospice
STV ELM Limited
The Lotteries Council
The Lottery Forum
Tower Lottery Partnership Limited

Annex B: Social Responsibility Codes

These new and amended social responsibility code provisions will come into force on 4 April 2018.

New Social responsibility code provision 4.3.1

Publication of percentage of lottery proceeds returned to the purposes of the society or local authority

All lottery operating licences issued to non-commercial societies and local authorities

- 1 Each year, licensees must publish details on the percentage of the total proceeds of lotteries promoted in the previous calendar year in reliance on this licence applied to purposes for which the society is conducted, or purposes for which the local authority has power to incur expenditure. This should be through either their annual report, lottery page of their society website or any other means appropriate to the size and scale of the organisation.

New Social responsibility code provision 4.3.2

Marketing of all lotteries conducted under a single brand (branded lotteries)

All lottery operating licences issued to non-commercial societies, local authorities and external lottery managers

- 1 Where a number of society lotteries are promoted under one brand (also known as a branded lottery¹), whether with an ELM or not, licensees must ensure that it is clear to consumers (or potential consumers), which society lotteries are being promoted.
- 2 The requirement in (1) must be made clear to consumers within any marketing communications, advertisements, promotions or any information surrounding the draw, winners and beneficiaries; and through any ticket documentation.

¹ 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.

Please note that the Code provision below is already in effect, it is only the definition at the end which has been added and takes effect from 4 April 2018.

Amended Social responsibility code provision 3.2.13

Access to gambling by children and young persons – remote lottery SR code

All remote lottery operating licences issued to non-commercial societies, local authorities and external lottery managers

- 1 Licensees must have and put into effect policies and procedures designed to prevent underage gambling, and monitor the effectiveness of these.
- 2 Such procedures must include:
 - a warning potential customers that underage gambling is an offence;
 - b requiring customers to affirm that they are of legal age
 - c regularly reviewing their age verification systems and implementing all reasonable improvements that may be made as technology advances and as information improves;

- d** ensuring that relevant staff are properly trained in the use of their age verification procedures; in particular anyone who sell lottery tickets including canvassers and customer services staff must be appropriately trained in the use of secondary forms of identification when initial verification procedures fail to prove that an individual is of legal age;
- e** enabling their gambling websites to permit filtering software to be used by adults (such as parents or within schools) in order to restrict access to relevant pages of those sites;
- f** in the case of any UK resident customer who deposits money using any type of payment method other than a credit card, and unless the licensee has established that a third party has satisfactorily carried out age verification, the following age verification procedures apply:
 - i** in the case of both subscription lotteries and low frequency lotteries*, and provided it is clear in the terms and conditions that those under the age of 16 are not permitted to participate and that the prizes will not be paid out to those found to be under 16, customers must be required to verify their age before being able to make any subscription or purchase entry into the lottery. (The operator is expected to conduct a programme of random checks of users who self-verify for compliance with age restrictions);
 - ii** in every other case verifying additional information about the customer, such as carrying out searches of credit reference and other databases that list names and addresses of individuals over the age of 16;
 - iii** carrying out secondary age verification checks in any circumstances which give the operator reason to suspect that the person may be underage;
 - iv** not permitting the customer to withdraw any winnings from their account until age verification has been satisfactorily completed; and
 - v** in any event, in a case which falls within ii above, a requirement that if age verification has not been satisfactorily completed within 72 hours of the customer applying to register to gamble and depositing money:
 - o the account will be frozen
 - o no further gambling will be permitted until age verification has been successfully completed
 - o if, on completion of age verification the customer is shown to be underage, the operator must return to the customer any money paid in respect of the use of gambling facilities, but no winnings shall be paid.
- g** in the case of any non-UK resident customer who deposits money using any type of payment method other than a credit card, and unless the licensee has established that a third party has satisfactorily carried out age verification, the following age verification procedures:
 - i.** taking all reasonable steps to make use of information available for age verification purposes from whichever country the potential customer is resident in; and
 - ii.** each of the following steps, unless they cannot reasonably be implemented or, in the case of the fourth bullet point, a period of more than 72 hours was reasonably required:
 - o verifying additional information about the customer, such as carrying out searches of credit reference and other databases that list names and addresses of individuals over the age of 18
 - o carrying out secondary age verification checks in any circumstances which give the operator reason to suspect that the person may be underage
 - o not permitting the customer to withdraw any winnings from their account until age verification has been satisfactorily completed
 - o a requirement that if age verification has not been satisfactorily completed within 72 hours of the customer applying to register to gamble and depositing money:
 - the account will be frozen;
 - no further gambling will be permitted until age verification has been successfully completed; and
 - if on completion of age verification the customer is shown to be underage all deposits held by the operator are returned to the customer and no winnings paid.

h. in the case of any customer who registers to gamble and deposits money using a credit card, conducting a programme of random checks of credit card users for compliance with age restrictions.

*** For the purposes of this code, a 'low frequency lottery' is one of a series of separate lotteries promoted on behalf of the same non-commercial society or local authority, or as part of the same multiple society lottery scheme, in respect of which there is a period of at least two days between each lottery draw.**

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