

EXPLANATORY MEMORANDUM TO
THE GAMBLING ACT 2005 (VARIATION OF MONETARY LIMIT) ORDER 2009

2009 No. 207

1. This explanatory memorandum has been prepared by the Department for Culture, Media and Sport and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

This Order increases the limit on the proceeds of any single lottery run by one or more non-commercial societies or local authorities in accordance with a lottery operating licence. The limit on proceeds for such a lottery is currently £2,000,000 which is being increased to £4,000,000. A consequential effect of this increase will be to increase the limit on any prize from £200,000 to £400,000.

3. Matters of special interest to the Joint Committee on Statutory Instruments

None.

4. Legislative Context

4.1 The Gambling Act 2005 (“The Act”) establishes a new system for the regulation of all gambling in Great Britain, other than the National Lottery and spread betting. It repeals the Betting, Gaming and Lotteries Act 1963, the Gaming Act 1968 and the Lotteries and Amusements Act 1976. The Act introduces a new regulator for gambling, the Gambling Commission, and a new licensing regime for commercial gambling. As part of the new licensing regime, the Act provides for three main types of licence: operating and personal licences which are issued by the Gambling Commission, and premises licences which are issued by licensing authorities.

4.2 Operating licences are one of the principal forms of authorisation under the Act for the lawful provision of facilities for gambling. These are held by people who wish to provide facilities for commercial gambling and, in general, it is an offence to provide such facilities without an operating licence. A person holding an operating licence, and providing facilities for gambling within the terms and conditions of that licence, does not commit an offence of unlawful provision of facilities for gambling under Part 3. Operating licences are issued and overseen by the Gambling Commission.

4.3 The Gambling Commission may issue an operating licence for the operation of a lottery. A lottery operating licence may only be issued to the following persons:

- Non-commercial societies;
- Local authorities; and
- External lottery managers.

4.4 For the purposes of the 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 gain¹.

4.5 A non-commercial society which wishes to promote lotteries will only require an operating licence if the proceeds of the lotteries it promotes exceed the thresholds set out in Part 4 of Schedule 11 to the Act. These thresholds are £20,000 in respect of proceeds for an individual lottery and £250,000 in respect of the aggregate of proceeds in any calendar year. If a society exceeds either of these limits it will need to obtain a lottery operating licence from the Gambling Commission.

4.6 A lottery operating licence may authorise a person to act as an external lottery manager, to provide lottery management services on behalf of local authorities and/or on behalf of non-commercial societies, whether licensed or exempt.

4.7 There are three types of licence conditions that may be attached to operating licences under the Act: general conditions and individual conditions, both of which are attached by the Commission; and conditions imposed by the Secretary of State.

4.8 **General Conditions** – These are conditions which the Gambling Commission may specify for an operating licence or a class of operating licence, and which have general application. In certain instances, the Act specifies mandatory conditions which the Commission are required to attach to specific operating licences.

4.9 **Individual Conditions** – These are specific conditions which the Gambling Commission may impose on individual operating licences. These conditions will address particular matters concerning an individual operator and its activities, where the Commission considers it appropriate.

4.10 **Secretary of State Conditions** – These are specific conditions which may be attached to a class of operating licence by the Secretary of State through regulations.

4.11 This Order relates to the mandatory general conditions specified under section 99 of the Act, which must be attached to certain types of lottery operating licences. Section 99 requires the Gambling Commission to attach certain conditions to lottery operating licences issued to non-commercial societies and local authorities, for the purpose of achieving the requirements set out in that section. The requirements include monetary or percentage limits in relation to proceeds and prizes in lotteries run by such societies or authorities.

¹ See section 19 of the Act for the definition of “non-commercial society”.

4.12 Section 99(2) of the Act requires that at least 20% of the proceeds of any lottery promoted in reliance on the licence be applied (a) in the case of a licence issued to a non-commercial society, to a purpose for which the promoting society is conducted, and (b) in the case of a licence issued to a local authority, for a purpose for which the authority has the power to incur expenditure.

4.13 Section 99(3) of the Act imposes a requirement that (a) the proceeds of any lottery promoted in reliance on the licence may not exceed £2,000,000 (two million pounds), and (b) the aggregate of the proceeds of lotteries promoted wholly or partly in a calendar year in reliance on the licence may not exceed £10,000,000 (ten million pounds).

4.14 Section 99(4) of the Act imposes a restriction on the amount of a prize that may be awarded by virtue of any ticket purchased in a lottery. It is not possible for the purchaser of a lottery ticket promoted in reliance on the licence to win more than (a) £25,000 (twenty five thousand pounds) or, (b) if more, 10% of the proceeds of the lottery. Accordingly, where the proceeds exceed £250,000 the limit on the prize will be dependent on the amount of the proceeds in that lottery. The current effect of the legislation is that if the maximum proceeds of £2,000,000 are received, the lottery can offer a prize of £200,000.

4.15 This Order increases the limit in section 99(3)(a) of the Act on the proceeds of any lottery, promoted by a non-commercial society or local authority under a lottery operating licence, from £2,000,000 to £4,000,000. No other variations are made to the monetary amounts or percentages in section 99. The consequential effect of increasing the limit on proceeds to £4,000,000 is that the limit on the amount of any prize that may be offered is also increased to a maximum of £400,000 (provided that the maximum proceeds of £4,000,000 are received). All other limits in section 99 are unaffected.

5. Territorial Extent and Application

This instrument applies to Great Britain.

6. European Convention on Human Rights

The Minister for Sport, Gerry Sutcliffe MP, has made the following statement regarding Human Rights:

“In my view the provisions of the Gambling Act 2005 (Variation of Monetary Limit) Order 2009 are compatible with the Convention rights.”

7. Policy background

- *What is being done and why*

7.1 Where a lottery is promoted by a non-commercial society or a local authority, it is the current policy that the proceeds of that lottery must not exceed £2,000,000 (two million pounds). It is the policy intention to increase the limit on proceeds to £4,000,000 (four million pounds).

7.2 It is also the current policy that where such a lottery offers a prize of more than £25,000, it must not offer a prize of more than 10% of the proceeds of the lottery. Accordingly, if the current limit on proceeds of £2,000,000 is achieved, the lottery may offer a maximum prize of £200,000. It is the policy intention to maintain the 10% limit on prizes and therefore an increase on the limit of proceeds to £4,000,000 will have the consequential effect of increasing the limit for a maximum prize to £400,000 (four hundred thousand pounds).

7.3 The purpose of the proposal is to enable societies to raise more money for good causes. It is current practice for societies occasionally to link together, perhaps annually, to offer a joint lottery which enables them, collectively, to raise the maximum proceeds of £2,000,000 (two million pounds). The effect is that those societies are able raise significantly more sums collectively than if they promoted a lottery independently.

7.4 Although societies are able to link together under the existing provisions of the Act, they are constrained by the limits on proceeds and prizes set out in section 99 of the Act. The Department has received representations from the Lotteries Council and the Hospice Lotteries Association arguing persuasively that societies which link together have the potential to raise significantly more than £2,000,000 by way of proceeds in any lottery. (Details of these representations are set out more fully in the Impact Assessment.) Therefore, the purpose of the proposals is to increase the limit on the proceeds in respect of lotteries promoted by a non-commercial society or local authority, to enable those lotteries which link together to raise significantly greater sums for good causes.

7.5 The purpose of increasing the maximum prize to £400,000 is to enable societies which link together to offer a major prize. If a major prize is offered then the lottery becomes more attractive and more tickets are sold. The Department has determined that £400,000 is an appropriate level for the revised maximum prize because it would achieve the purpose of attracting more participants whilst retaining the character of society lotteries. It appears to us that £400,000 is not so great a sum as to attract players whose principle objective would be to win a life-changing amount of money. It is expected that the core players of the lottery would continue to be those who support the good cause in question; and the Gambling Commission as the Government's principle adviser on gambling issues has previously advised that there is no reason to believe that the licensing objectives of the Act would be jeopardised by an increased incidence of criminality or problem gambling associated with such a game.

7.6 The aggregate of the proceeds of lotteries promoted in a calendar year is to remain at a maximum of £10,000,000 (ten million pounds); and the single value of a prize where the proceeds are less than £250,000 (two hundred and fifty thousand) is to remain at £25,000 (twenty five thousand pounds).

- ***Consolidation***

7.7 This Order provides a small textual amendment to the Gambling Act 2005. There are no plans at present to consolidate that Act.

8. Consultation outcome

8.1 The Department has consulted on this proposal and a paper is attached (Annex A) summarising the responses to the consultation.

8.2 A clear majority of respondents (7 out of 10) were in favour of the Government's proposal to increase the limit on proceeds from individual society lottery draws and felt that there would be no increase in risks of problem gambling or fraud. A majority (6 out of 10) also felt that the new proposed limit of £4 million was appropriate and adequate.

8.3 Three respondents (the National Lottery Commission, the Camelot Group and Sport Scotland) felt there was no clear case or evidence base to support an increase in prize limits on society lotteries. They highlighted what they saw as a potential negative effect on the National Lottery's standing and performance, in that the new higher prize might entice members of the public away from playing the Lotto. They felt that this should be avoided, given the National Lottery's special role in raising funds for the Good Causes. However, most respondents considered that the proposal constituted no risk to the National Lottery as society lotteries offered different products to different target markets; and supported maintaining the maximum prize threshold at 10%.

8.4 Conversely, two respondents (the Lotteries Council and the People's Postcode Lottery, an operator of linked lotteries) indicated that they would welcome a higher limit on proceeds. The Lotteries Council was specific that £4 million was inadequate, and that £5 million (with a £500,000 maximum prize) was more appropriate. We have written to the Lotteries Council to explain our reasoning behind the proposed level.

8.5 The Department is confident that, despite some opposition to its proposals from bodies holding diametrically opposed points of view, its middle course of an increase to £4 million represents the right way forward.

9. Guidance

The revised limit will require a corresponding change to the Gambling Commission's Licence Conditions and Codes of Practice. This change has been consulted upon by the Commission in parallel with the Department's consultation. The Commission received a total of four responses to its consultation: all were in general agreement that raising the limit on proceeds from individual society lottery draws would be an advantage to fundraising organisations and that the licence condition should be amended accordingly.

10. Impact

10.1 The impact on business, charities or voluntary bodies is that all charities, sports and social clubs and external lottery managers wishing to run lottery draws will be able to benefit from the new increased limit on proceeds. The measure will in no way threaten the ability of any single lottery licence holder to compete with other licence holders.

10.2 The impact on the public sector is that local authorities wishing to run such lotteries will benefit from the new increase in limits on proceeds and prizes.

10.2 An Impact Assessment is attached to this memorandum at Annex C.

11. Regulating small business

The legislation applies to external lottery managers promoting lotteries on behalf of non-commercial societies and local authorities. Therefore, the legislation will enable small business, established to promote such lotteries, to compete for new business created by the increased limits.

12. Monitoring & review

The Department will ensure that the Gambling Commission monitors the impact of the revised limit against the licensing objectives; and we will ask that a report of its conclusions be made to DCMS three years after implementation. The results will be taken into account before any further revision of the prize limits is considered.

13. Contact

Alistair Boon at the Department for Culture, Media and Sport (tel: 020 7211 6486 or email: alistair.boon@culture.gsi.gov.uk) can answer any queries regarding the instrument.

Summary: Intervention & Options

Department /Agency:
**Department for Culture,
Media and Sport**

Title:

The Gambling Act 2005 (Variation of Monetary Limit) Order 2009

Stage: Draft SI consultation

Version: 3

Date: 06 November 2008

Related Publications:

<http://www.>

Warwick Hawkins DCMS

020 7211 6475

What is the problem under consideration? Why is government intervention necessary?

Society lotteries are lotteries typically promoted by national and local charities, sporting and social clubs in order to raise funds for local good causes such as hospices. Society lotteries whose proceeds exceed £20,000 in any lottery, or £250,000 in any calendar year, must hold a lottery operating licence issued by the Gambling Commission. Some 630 groups currently hold such a lottery operating licence.

The objectives of the Gambling Act 2005 (the Act) are to prevent gambling from being a source of crime or disorder; to ensure that gambling is conducted in a fair and open way; and to protect children and other vulnerable persons from being harmed or exploited by gambling. To this end, the Act contained limits on proceeds and prizes of society lottery draws. These ensured that draws run for the purpose of raising funds for charitable and sporting activities remained primarily attractive to supporters of those causes, and did not offer prizes so large that they a) changed the character of a society lottery by appealing to players for whom winning a prize of a significant amount would be a greater attraction than supporting the charitable cause in question; b) potentially brought about increased fraud and other criminal activity, or increased risk of problem gambling.

These monetary or percentage limits on proceeds and prizes in society lotteries are set out in section 99 of the Act, which requires the Gambling Commission to attach various conditions to lottery operating licences. Section 99(3) imposes a requirement that the proceeds of any lottery may not exceed £2 million, and that the aggregate of the proceeds of lotteries in a calendar year may not exceed £10 million. Section 99(4) prohibits the purchaser of a society lottery ticket from being able to win more than £25,000 (if the total proceeds of the lottery are under £250,000), or 10% of the proceeds (if they are £250,000 or more). Therefore, the maximum prize which can be offered in a society lottery is currently £200,000. Section 99(2) stipulates that a minimum 20% of the proceeds must go to the relevant good cause. Section 99(11) of the Act permits the Secretary of State to vary by order any of the monetary amounts or percentages set out in section 99.

In recent months DCMS has received representations from the Lotteries Council (LC) and the Hospice Lotteries Association (HLA), seeking changes to the regulatory regime for large society lotteries. These argued that though very few societies currently reach the present limits, the present limits hold them back, for example by preventing a number of societies coming together to promote a larger one-off annual draw.

The aim of these representations was therefore to persuade the Government to increase the present

limit on the proceeds which are permitted to be raised by society lotteries in a single draw, under section 99, from £2 million to £5 million. In order to attract more members of the public to purchase tickets, the LC and the HLA also sought an increase in the maximum prize that could be offered in a draw to £1 million. This would entail an increase in the maximum percentage of proceeds that could be offered in prizes, to 20% from the present 10%. As an alternative option the LC and the HLA suggested that this 10% maximum might be retained, implying a maximum prize fund of £500,000.

DCMS Ministers have always been willing to consider representations made to them that they should exercise their power to vary society lottery limits in order to benefit the good causes supported by society lotteries. In 2002 the Government responded positively to representations when the then limits were doubled, both on proceeds on individual draws and on the overall annual limit for each society lottery, to their present levels of £2,000,000 and £10,000,000 respectively. At that time the maximum ticket price was also doubled to £2, a limit which was removed altogether by the Act.

Gerry Sutcliffe, the Minister with responsibility for gambling, considered carefully the representations recently made by the LC and the HLA, as well as those of the Gambling Commission (the Government's principal adviser on gambling matters) which has long recommended an increase in society lottery limits. He also noted that the campaign for an increase has attracted significant support in Parliament. Through signing Early Day Motion 1570 tabled in May this year, seventy Members of Parliament expressed support for an increase in proceeds limits under the Act, specifically in relation to hospice lotteries.

The Minister set out his response to the present LC/HLA campaign in a written statement on 16 July 2008. In his statement he made it clear that he accepted the LC/HLA case that some increase in society lotteries limits was merited.

What are the policy objectives and the intended effects?

The Government is proposing to increase the limit on proceeds contained in section 99(3)(a) of the Act from £2 million to £4 million. The Gambling Commission is in agreement with this increase and, subject to Parliamentary approval of the Government's proposals, proposes to effect the change by amending its Licence Conditions and Codes of Practice to allow permit society lotteries to take advantage of the new limits. The Government is not proposing to amend any other percentages or monetary sums contained in section 99.

The effect of the proposal will be to enable large societies to receive proceeds up to £4 million in the promotion of a society lottery. The Government does not propose to vary the limits in section 99(4)(b) regarding prizes; therefore a society lottery would be able to offer a maximum £400,000 prize (if the maximum proceeds are received). The current limit is £200,000 for any prize.

The Government believes that this level of increase achieves a satisfactory balance between providing a valuable boost to hospices and other charitable enterprises which raise funds through lottery draws, and retaining the character of society lotteries, thus remaining wholly consistent with the licensing objectives of the Act.

What policy options have been considered? Please justify any preferred option.

This proposal arises out of a specific application from the LC and HLA to the Government for an increase in society lottery limits. The Department considered carefully whether any other deregulatory measures were available to assist the society lottery sector. However, the Gambling Act 2005 had already introduced a range of deregulatory measures to benefit society lotteries, and this left little scope for any further such measure.

Another option would have been to reject the LC/HLA case completely and leave the limits unchanged. However, the Minister decided that a strong case had been made for an increase in the maximum proceeds that society lotteries may raise in a single lottery draw, and saw no good reason why societies should not be able to come together to promote larger one-off draws, taking advantage of a higher proceeds limit. There had been no increase since 2002.

(cont.)

Having reached this conclusion, the Minister was obliged to come to a view on the correct amount of any increase and where it might be applied on the limits within section 99. In doing so, he had to balance arguments put to him for increasing the amount which society lotteries can raise for projects, with his responsibility to ensure that the licensing objectives of the Act are protected.

He took the view that most people play society lotteries primarily because they wish to contribute to the good causes concerned, which are often hospices and other local charities. The current maximum prize which a person can win in a society lottery is £200,000. However, there appeared to him to be a risk that significantly increasing the prize limit could change the character of a society lottery by appealing to players for whom winning such a prize would be a greater attraction than supporting the charitable cause in question.

In the Minister's view, the potential to win a significant sum could bring with it increased risks associated with problem gambling. This could be the case particularly if such a prize were offered on a regular basis, for instance by an external lottery manager organising draws on behalf of a number of charities, either jointly or in sequence. Furthermore, the significantly larger sums of money in these lotteries could increase the potential for fraud and other criminal activity.

Having weighed these considerations, the Minister concluded that there was indeed a reasonable justification for a limited increase in the maximum proceeds that society lotteries may raise in a single lottery draw. However, he felt that this should be on a more modest scale than that suggested by the LC and the HLA.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

One year after implementation.

Ministerial Sign-off For SELECT STAGE Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:

..... Date:

Summary: Analysis & Evidence

Policy Option: Consult on draft SI		Description: Draft SI to double the limit on proceeds from individual society lottery draws, from £2 million to £4 million.	
COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups': The Order will impose no obligatory costs on charities, sports clubs etc that run lotteries as none will be obliged to run a draw with the new higher proceeds limit. Those that do so may need to print more lottery tickets, but this expenditure will be more than counter-balanced by increased proceeds.
	One-off (Transition)	Yrs	
	£ None		
	Average Annual Cost (excluding one-off)		
£ None		Total Cost (PV) £ None	
Other key non-monetised costs by 'main affected groups' None.			
BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups' The measure would double the maximum income from individual lottery draws of bodies that run them to as much as £4 million. However, the annual maximum will remain the same so there will be no net annual benefit.
	One-off	Yrs	
	£ None		
	Average Annual Benefit (excluding one-off)		
£ None		Total Benefit (PV) £ None	
Other key non-monetised benefits by 'main affected groups' None.			

Key Assumptions/Sensitivities/Risks The Department has considered whether the proposed increase, by permitting a maximum prize of £400,000, would change the character of a society lottery by appealing to players for whom winning such a prize would be a greater attraction than supporting the charitable cause in question, potentially bringing increased risks associated with problem gambling and criminal activity such as fraud. However, the Department concluded that a limited increase in the maximum proceeds that society lotteries may raise from a single lottery draw would not have this effect. It was supported in this view by the Gambling Commission as the Government's statutory adviser on gambling issues.

The Department further considered whether the increased maximum prize could attract players away from the National Lottery and thus diminish income for the Good Causes it supports. However, it took the view that the National Lottery and society lottery sectors can co-exist successfully. The sectors differ greatly in size, the National Lottery raising approximately £5 billion a year as opposed to an annual total of £170 million by society lotteries. When the limits were last increased (they were doubled in 2002) there was no evidence of a significant effect on National Lottery income.

Price Base Year	Time Period Years	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate) £ None
What is the geographic coverage of the policy/option?			Great Britain
On what date will the policy be implemented?			2 nd quarter 2008/9
Which organisation(s) will enforce the policy?			The Gambling Commission, through its Licence Conditions and Codes of Practice
What is the total annual cost of enforcement for these organisations?			£ None
Does enforcement comply with Hampton principles?			Yes

Will implementation go beyond minimum EU requirements?			Yes	
What is the value of the proposed offsetting measure per year?			£ n/a	
What is the value of changes in greenhouse gas emissions?			£ n/a	
Will the proposal have a significant impact on competition?			No	
Annual cost (£-£) per organisation (excluding one-off)	Micro none	Small none	Medium none	Large none
Are any of these organisations exempt?	No	No	No	No
Impact on Admin Burdens Baseline (2005 Prices)			(Increase - Decrease)	
Increase of £	Decrease	£	Net Impact	£ None

Key: Annual costs and benefit

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

Results of the specific impact tests are set out below.

Competition assessment

All charities, sports and social clubs and local authorities wishing to run lottery draws will be able to benefit from the new increased limit on proceeds. The measure will therefore in no way threaten the ability of any single lottery licence holder to compete with other licence holders.

We do not believe that society lotteries are in competition with the National Lottery, for the reason that the two types of lottery have an entirely different ethos. Members of the public purchase society lottery tickets primarily to benefit the good cause in question, whereas they purchase Lotto tickets primarily in order to have a chance to win a significant amount of money. We do not believe that by allowing society lotteries to offer a maximum prize of £400,000 instead of £200,000, the measure will significantly alter the ethos of society lotteries. Gambling Commission advice supports this analysis.

(See also Key Assumptions/Sensitivities/Risks above.)

Small Firms

Commercial operators are not permitted to apply for society lottery licences and therefore the proposals will not have any impact on small business. However, external lottery managers will be equally able to compete for new business created by the increased limits.

Legal Aid

No impact.

Sustainable Development

No impact.

Carbon Assessment

There may be some increase in the number of lottery tickets printed, in order to accommodate greater demand, but we do not believe that this will have a measurable impact in environmental terms.

Other Environment

No impact.

Health Impact Assessment

As shown in the Gambling Prevalence Study 2007, the level of problem gambling associated with society lotteries is negligible. (Just 2.1% of problem gamblers participated in a lottery other than the National Lottery in 2007.) We do not anticipate that the proposed increase in the limit on individual lottery proceeds will lead to an increase, but under the Gambling Act, all licensed operators have a social responsibility duty to run their operations in a way that complies with the objectives of the Act. The Gambling Commission as the regulator has a duty to uphold the same principles, and has the powers to regulate accordingly through its Licence Conditions and Codes of Practice.

Race Equality

No impact.

Disability Equality

No impact.

Gender Equality

No impact.

Human Rights

The provisions of the Order are compatible with the European Convention on Human Rights.

Rural Proofing

Society lottery operators in rural areas would be able to benefit from the measure in the same way as their urban counterparts.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	✓	
Small Firms Impact Test	✓	
Legal Aid	✓	
Sustainable Development	✓	
Carbon Assessment	✓	
Other Environment	✓	
Health Impact Assessment	✓	
Race Equality	✓	
Disability Equality	✓	
Gender Equality	✓	
Human Rights	✓	
Rural Proofing	✓	

ALL RESULTS IN EVIDENCE BASE SECTION. (No annexes)

